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1 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

2 -----x
UNITED STATES OF AMERICA,

New York, N.Y.

3
4 v.

15 Cr. 861(JMF)

ROBERT OLINS,

5
6 Defendant.
-----x

7 December 20, 2016
8 9:10 a.m.

9 Before:

10 HON. JESSE M. FURMAN,

11 District Judge

12
13 APPEARANCES

14 PREET BHARARA

United States Attorney for the
Southern District of New York

15 BY: CHRISTINE I. MAGDO

16 ANDREA M. GRISWOLD

Assistant United States Attorneys

17
18 DOAR, RIECK, KALEY & MACK

Attorney for Defendant

19 BY: JAMES R. DeVITA

20
21 LAW OFFICE OF ANTHONY CECUTTI

Attorney for Defendant

22 BY: ANTHONY CECUTTI

23 ALSO PRESENT:

24 HOLLY MEISTER, U.S. Attorney's Office

VIRGINIA FAUGHNAN, U.S. Postal Service

25 MATTHEW BITTERMAN, FBI

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1 (Case called)

2 MS. MAGDO: Good morning, your Honor. Assistant U.S.
3 Attorney Christine Magdo for the government. With me at
4 counsel table is Assistant U.S. Attorney Andrea Griswold,
5 Paralegal Specialist Holly Meister, and Postal Inspector
6 Virginia Faughnan. Good morning.

7 THE COURT: Good morning.

8 MR. DeVITA: Good morning, your Honor. James DeVita,
9 Doar, Rieck, Kaley & Mack, for Mr. Olins. With me is Anthony
10 Cecutti, and Mr. Olins is here.

11 THE COURT: Good morning to you, as well. Mr. DeVita,
12 I hope you are doing well.

13 MR. DeVITA: Yes, your Honor. Something of a false
14 alarm. It turned out to be something less serious than it
15 could have been, but it kept me in the emergency room from 8:00
16 in the morning until 10:00 at night to find that out.

17 THE COURT: All right. Well, I'm sorry to hear about
18 that but certainly pleased to hear that it appears to have been
19 less serious than you feared. Good to see you.

20 We are here for the *Fatico* hearing and, assuming that
21 time allows, sentencing. I am happy to cut right to the
22 hearing, but do you want to give me a sense of what I can
23 expect? Not in terms of the particulars, but just in terms of
24 witnesses and the like.

25 MS. MAGDO: Yes, your Honor. I would appreciate the

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1 opportunity to just frame the issues before the court before we
2 call our first witness.

3 THE COURT: Sure.

4 I will stress that I have read all of the submissions,
5 and I think those do helpfully frame the issues; but to the
6 extent you think that there is additional framing that I would
7 benefit from, go ahead.

8 MS. MAGDO: Okay. Well, it will just take a couple of
9 minutes. I know there have been a number of submissions and a
10 lot of back and forth.

11 I just want to clarify what's at issue and what the
12 government believes is not in dispute.

13 So what is not in dispute is that the parties entered
14 into a plea agreement that has a stipulated guidelines range of
15 33 to 41 months. As the court is well aware, the parties are
16 bound by the plea agreement, not to seek a sentence outside of
17 this guidelines range. And so, at first blush, it may seem a
18 little bit unusual that we are having a *Fatico* hearing, that
19 the government requested a *Fatico* hearing, where the parties
20 are constrained to a relatively narrow range of eight months in
21 terms of sentencing.

22 But, as your Honor is aware, Mr. Olins has submitted
23 two sentencing submissions, and the government believes that
24 the lengths that he goes to to deny, to excuse, and to downplay
25 his criminal conduct and to shift blame on to others is worth

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1 putting to rest, so to speak, or attempting to put to rest,
2 because it doesn't present an accurate version, in the
3 government's opinion, of what actually happened.

4 So Mr. Olins, in his submissions, spends a lot of time
5 making accusations against Mr. Neville. He depicts him as the
6 mastermind and himself as a victim of Mr. Neville.

7 As the government's witnesses today will testify,
8 there is a lot of fraudulent --

9 THE COURT: Hold on for a second. I don't know who is
10 in the back. I assume none of them is someone likely to be
11 called as a witness?

12 MS. MAGDO: That's correct, your Honor.

13 THE COURT: Okay. Thank you. Go ahead. Sorry to
14 interrupt.

15 MS. MAGDO: No problem.

16 We have some witnesses today, your Honor, who will
17 speak about instances of fraudulent or disruptive conduct that
18 Mr. Olins engaged in which had nothing to do with Mr. Neville
19 or involved Mr. Neville only tangentially.

20 Basically what Mr. Olins wants the court to believe is
21 that, aside from the narrow sliver of criminal activity to
22 which he allocuted at his plea hearing, the remainder of the
23 allegations in the indictment are false. For example, the
24 indictment alleges that, in November 2012, before Mr. Jacob
25 purchased the dragon candelabra from the receiver, Mr. Olins

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1 made an agreement with Mr. Jaeger whereby Mr. Olins would
2 receive share of proceeds, and Mr. Jaeger could resell the
3 dragons at a significant markup. When that markup was not
4 achieved, Mr. Olins took a cut from the proceeds anyway, and
5 then falsely stated to Mr. Jaeger that he had not done so.

6 So what Mr. Olins is doing is, rather than admitting
7 his wrongdoing or even remaining silent about it, he has
8 presented in his sentencing submission a completely alternative
9 version of what happened between Mr. Jaeger and Mr. Rusco -- I
10 mean between Mr. Jaeger and Mr. Olins. So this is conduct that
11 is set forth in the indictment, and we think it is worth the
12 time to set the record straight, as the government sees it.

13 The indictment also described Mr. Olins' purchase on
14 credit of a pair of wall brackets worth about \$700,000; and,
15 here, what I would just like to point out for the court is
16 that, although the government believes evidence shows the wall
17 brackets were purchased in early 2011, Mr. Olins maintains that
18 they were purchased in 2010 and spends a lot of time in his
19 submissions writing about that.

20 But, just to clarify, whether they were purchased in
21 2010 or 2011 is ultimately not material. What is material is
22 that in 2012 and 2013, Mr. Olins diverted about a half million
23 dollars of money that should have gone to the receiver and he
24 put it towards paying for those wall brackets.

25 And finally, the indictment also alleges wrongdoing by

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1 Mr. Olins with respect to a set of three vases. Now, Mr. Olins
2 admits that he should not have wired \$160,000 that he received
3 from the sale of those vases to an account in the Isle of Man
4 and that he did so in an effort to hide the money from the
5 receiver and the SEC. But Mr. Olins denies that he and
6 Mr. Neville had prearranged a split of the proceeds. He again
7 blames Mr. Neville for defrauding the receiver, and this time
8 tries to pass himself off as a lucky latecomer who happened to
9 stumble upon the spoils of Mr. Neville's criminal activity and
10 managed to convince Mr. Neville to share those proceeds with
11 him.

12 Finally, Mr. Olins seeks to mitigate his wrongdoing by
13 claiming that he was motivated by dire financial desperation;
14 but, again, as the government will show, this self-serving
15 version of the events is simply not supported by the evidence
16 and is yet another attempt to distract the court from the
17 conduct at issue.

18 So, to conclude, the efforts that I have just
19 described by Mr. Olins, this classic smoke and mirrors
20 technique, Mr. Olins undoubtedly hopes will prevent the court
21 from focusing on the evidence of his guilt.

22 If, during today's proceeding, the government believes
23 that the defendant has failed clearly to demonstrate acceptance
24 of responsibility, the government will seek denial of the
25 three-point adjustment that is currently in the plea agreement

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1 for acceptance of responsibility.

2 Just briefly, the witnesses we plan to call today are
3 Mr. Rusco, who works for AB&T Bank, which was appointed
4 receiver over Mr. Olins' art and antiques collection;
5 Mr. Jaeger, who was an acquaintance --

6 (Pause)

7 MS. MAGDO: -- who appeared on cue at the door, which
8 was not intended, Mr. Jaeger, who was an acquaintance of
9 Mr. Olins and who purchased the dragon candelabra; Mr. Neville,
10 with whom the court is familiar, who worked for Mallett; and
11 then our paralegal, Holly Meister, to put in some financial
12 records and summary charts.

13 We had originally intended to call Ms. Silverstone as
14 a short witness -- she is an interior decorator who did work
15 for Mr. Olins during the relevant time period -- but she was
16 scheduled to have surgery this morning, so we excused her
17 appearance.

18 So we have four witnesses.

19 THE COURT: All right. Thank you.

20 MR. DeVITA: Your Honor, let me start by reassuring
21 the court, Mr. Olins accepts responsibility for his crime. He
22 has pled guilty to it. We don't deny that he committed the
23 crimes to which he has pled guilty -- obstruction, conspiracy
24 to obstruct justice, and money laundering.

25 The details, I think, are -- and, secondly, it is

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1 clear from the -- and I think will be clear from this hearing,
2 that Mr. Olins' financial circumstances, after the SEC
3 disgorgement order, became extremely dire; and that is not an
4 excuse for his crime, but it is context for which your Honor to
5 take into account. It is not denial of his guilt or any
6 shirking of acceptance of responsibility. It is simply to put
7 into context motivation.

8 There have been references to high living, apartments
9 in Spain, none of which materialized. And your Honor will hear
10 that there are many instances, there is substantial evidence of
11 Mr. Olins' difficulties, financial difficulties throughout this
12 entire period. As I say, it is not offered for an excuse,
13 merely to put the entire crime in context.

14 I think that there may be a difference of memories as
15 to who agreed to what at what time. I think that Mr. Neville's
16 memory is incorrect. I think that the key point that the
17 government -- that the defense has made with respect to the
18 dragon candelabra is that, when they were sold, they were sold
19 free and clear of any claim by the bank. They were sold to
20 Mr. Jaeger with the full knowledge that he was going to try and
21 sell them for profit.

22 The bank forewent -- could have kept the dragon
23 candelabra and continued trying to sell it, as it had been for
24 two years. It chose to shift the risk of loss or the hope of
25 gain to someone else. And the fact that ultimately Mr. Olins

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1 shared in that may not be admirable, but I don't think it
2 constitutes a fraud against the bank, because there were no
3 misrepresentations in connection with that. All of that was
4 very transparent.

5 So that is basically our position.

6 Where we differ --

7 THE COURT: All right. I think I have a pretty good
8 sense from the papers, which, as I said, I have read very
9 carefully. You will have an opportunity to be heard, if not at
10 the conclusion of the hearing, then at sentencing.

11 So why don't we, I would propose, get started and have
12 the government call its first witness?

13 MS. MAGDO: Thank you, your Honor.

14 The government will call Mr. Rusco.

15 GREGORY WESTFALL RUSCO,

16 called as a witness by the government,

17 having been duly sworn, testified as follows:

18 THE COURT: You may proceed.

19 MS. MAGDO: Thank you.

20 DIRECT EXAMINATION

21 BY MS. MAGDO:

22 Q. Mr. Rusco, where are you currently employed?

23 A. Currently employed with American Bank & Trust Company in
24 Tulsa, Oklahoma.

25 Q. How long have you been employed at -- is it referred to as

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Rusco - Direct

1 AB&T?

2 A. Generally, yes, AB&T.

3 Q. How long have you been employed at AB&T?

4 A. 32 years.

5 Q. What is your current position there?

6 A. I am executive vice president in commercial lending.

7 Q. Back in 2003, were you also involved in commercial lending?

8 A. Yes.

9 Q. In May 2003, did AB&T make a loan to Mr. Olins?

10 A. Yes, we made a loan, actually, to Argyle Capital Management
11 Corporation, and Robert Olins was a guarantor of that loan.

12 Q. What did you understand the relationship between Argyle
13 Capital Management and Mr. Olins to be?

14 A. He was 100 percent owner of Argyle Capital, Mr. Olins was.

15 Q. And was the loan originally in the amount of \$3 million?

16 A. Approximately that amount, yes.

17 Q. And what was the original collateral for the loan?

18 A. Originally we had an assignment of promissory notes from
19 Spatia Light, as well as Spatia Light stock, and then a
20 negative pledge on a portion of Robert's art and antique
21 collection.

22 Q. What is a negative pledge?

23 A. That's an agreement where the assets listed in the
24 agreement, the pledgor agrees not to encumber them or sell them
25 without any consent on our part.

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1 Q. After AB&T made the original loan in 2003, were
2 modifications made to the loan?

3 A. Yes, they were.

4 Q. When did the last of those modifications occur?

5 A. The last modification occurred in April of 2009.

6 Q. What was the amount of the loan at that time -- of the
7 principal?

8 A. The principal amount of that loan was \$5,100,000.

9 Q. And at that time, in April 2009, what were the assets
10 serving as collateral for the loan?

11 A. There was a pledge of Mr. Olins' art and antique portfolio,
12 the entire portfolio.

13 Q. And did you have a sense of the value of that portfolio in
14 2009?

15 A. Yes.

16 Q. Approximately how much did you understand it to be worth?

17 A. It was in the 10 to \$12 million range.

18 Q. What was that based on?

19 A. That was based on auction estimates, original purchase
20 price of assets, and insured values.

21 Q. And prior to 2011, had payments on the loan been made in a
22 timely fashion?

23 A. Yes, they had.

24 Q. And what was the source of the principal payment, the
25 payments toward the principal amount of the loan?

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Rusco - Direct

1 A. It was the sale of the art and antique assets.

2 Q. So, in other words, it was the sale of the same assets that
3 were serves as collateral?

4 A. Correct.

5 Q. And why was the loan structured or why was the payment of
6 the principal structured in this way?

7 A. We were at a point where we needed to pay down the loan,
8 and that was the only source of income that we knew that Robert
9 had was to sell those assets.

10 Q. And how were those assets sold to make payments?

11 A. There were two ways we did it.

12 One was to place them in an auction house and have
13 them sold through the auction company or through a retail
14 dealer. We would consign them to the dealer and have a certain
15 price that we would accept for payment of those -- the sale of
16 those assets.

17 Q. Was Mr. Olins permitted to sell items from the art and
18 antique collection without your knowledge?

19 A. No, he was not.

20 Q. And what was to happen to the proceeds from those sales?

21 A. The proceeds were to have been paid to the bank in order
22 for us to apply them on the principal of the loan.

23 Q. And do those proceeds include 100 percent of the proceeds
24 net of commissions?

25 A. That's correct.

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Rusco - Direct

1 Q. Did there come a time when your ability to sell the items,
2 as you just have described, was restricted?

3 A. Yes, there was a time.

4 Q. When was that?

5 A. That was in August of 2011.

6 Q. And what was that restriction?

7 A. The SEC had invoked a restraining notice on those assets,
8 saying that they could not be sold without any consent or
9 acknowledgment by them.

10 MS. MAGDO: If we could please display Government
11 Exhibit 102.

12 BY MS. MAGDO:

13 Q. Mr. Rusco, that should appear on your screen as well as it
14 should be in the binder that you have in front of you so you
15 can look at it whichever way you prefer.

16 THE COURT: Why don't we go with the binder for now.

17 THE WITNESS: The screen is not coming up mine is not.

18 BY MS. MAGDO:

19 Q. So is this the restraining order from 2011, August 2011
20 that you just described?

21 A. Yes, it is.

22 Q. And turning to page 2 of the restraining order itself --

23 MR. DeVITA: Your Honor, I am going to object to
24 calling it an order. It's a restraining notice.

25 MS. MAGDO: Sorry, restraining notice. That's right.

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Rusco - Direct

1 BY MS. MAGDO:

2 Q. I am just going to read from the bottom of the notice, I am
3 sorry, from the bottom of page 2 continuing on to page 3 of the
4 notice.

5 First of all -- let me back up for a second -- this is
6 addressed to Mallett, Inc., correct?

7 A. That's correct.

8 Q. Do you have an understanding of why it was addressed to
9 Mallett, Inc.?

10 A. They had possession of a number of the assets that were on
11 consignment with them.

12 Q. And what is Mallett, Inc.?

13 A. Mallett, Inc., is a prominent art and antique dealer in New
14 York and in London.

15 Q. Okay. So let's look at the bottom of page 2, where it
16 says, "You are hereby forbidden to make or suffer any sale,
17 assignment, transfer, or interference with any property in
18 which the Defendants/Judgment Debtors Olins and Argyle Capital
19 Management Corp. has an interest, except on direction of the
20 United States Marshal or pursuant to an order of the court,
21 until the judgment is satisfied or vacated."

22 Did you understand this restraining order --
23 restraining notice to apply to your ability or to restrict your
24 ability, as AB&T, to sell items from the art and antique
25 collection?

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1 A. Yes, we did.

2 Q. So in August 2011, did you halt sales of the items in the
3 arts and antique collection?

4 A. Yes, we did.

5 Q. Did there come a time that Argyle defaulted on the loan?

6 A. Yes, December 15, 2011.

7 Q. What was the outstanding principal of the loan at that
8 time?

9 A. It was in the range of 2.5 to 2.7 million dollars.

10 Q. But you couldn't sell the collateral for the remaining
11 principal because it was restrained pursuant to the SEC notice,
12 right?

13 A. That is correct.

14 Q. Did the SEC take any other actions with respect to the arts
15 and antique collection?

16 A. They initiated an effort to have a receivership appointed.

17 Q. Was that in this federal court here in the Southern
18 District of New York?

19 A. Yes, it was.

20 Q. In connection with the SEC's application for a receiver,
21 did AB&T take a position?

22 A. Yes, we did.

23 Q. And what was AB&T's position?

24 A. We felt at the time it was not an appropriate action to
25 take, and we wanted to not signal to the market that there was

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Rusco - Direct

1 any kind of distress in the sale of these assets.

2 Q. And did you feel that you had been successful in selling
3 those items prior to the restraining notice?

4 A. Yes, we had.

5 Q. Ultimately did the court here in the Southern District of
6 New York grant the SEC's application to appoint a receiver?

7 A. Yes, they did grant that order.

8 Q. And did the court issue an order to that effect?

9 A. Yes, they did.

10 Q. So directing your attention to Government Exhibit 3, is
11 this a letter that you -- the first page, is this a letter that
12 you wrote to Mallett attaching the order?

13 A. Yes, it is.

14 Q. And what follows? Is that the order that Judge Denise
15 Cote, here in New York, signed?

16 A. Yes, it is.

17 Q. And who was appointed receiver of the art and antique
18 collection?

19 A. American Bank & Trust Company.

20 Q. And when was American Bank & Trust Company appointed
21 receiver?

22 A. It was May 11, 2012.

23 Q. What assets were covered by this order?

24 A. They were the entire collection of Robert Olins' art and
25 antiques.

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Rusco - Direct

1 Q. Are those items specified anywhere in the order?

2 A. Yes. They are specified in Exhibit A of the order.

3 Q. And were these the same assets that had secured the AB&T
4 loan as of April 2009?

5 A. Yes, they are.

6 Q. Was AB&T appointed receiver for both its own outstanding
7 loan and for the SEC debt?

8 A. Yes, we were.

9 Q. And according to the order, which of those parties had
10 first priority?

11 A. According to the order, appointing receiver.

12 Q. Well, what was your understanding of which party had
13 priority to the payments?

14 A. Our understanding was that American Bank, as secured
15 lender, had the first priority on the proceeds of those assets.

16 Q. And what does that mean in practical terms?

17 A. Well, it means that any time the assets were sold, the
18 proceeds of those sales would be used to pay down our loan.

19 Q. And after the principal of your loan was paid, what would
20 happen to the proceeds?

21 A. Then those proceeds would be paid to the SEC.

22 Q. So the receiver order gives AB&T certain duties and powers,
23 correct?

24 A. That's correct.

25 Q. And it also imposed certain duties on anyone who possessed

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Rusco - Direct

1 or controlled any of the receivership assets, right?

2 A. That's correct.

3 Q. So let's just look at page 7 of the receivership order in
4 paragraph 11. I am just going to read this briefly, a portion
5 of this.

6 So, "This applies to all institutions and other
7 persons or entities which have possession, custody, or control
8 of any receivership property." Correct?

9 A. Yes, is that correct.

10 Q. And by "receivership property," we mean all the assets
11 listed in Exhibit A, is that your understanding?

12 A. That's correct.

13 MR. DeVITA: I'm sorry, what page are we referring to?

14 MS. MAGDO: Sure. This is page 5.

15 THE COURT: It says page 5 of 12.

16 MS. MAGDO: I misspoke. I may have said page 7, but
17 it is paragraph 11.

18 MR. DeVITA: Yup, thanks.

19 BY MS. MAGDO:

20 Q. Does this order direct any such parties to "not liquidate,
21 transfer, sell, convey, or otherwise transfer any receivership
22 property" -- I am skipping ahead -- "except upon instructions
23 from the receiver"?

24 A. Yes, that's what the order states, correct.

25 Q. And does it also state that "such parties shall not

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1 exercise any form of setoff, alleged setoff, or any form of
2 self-help whatsoever without the permission of this court"?

3 A. That is correct.

4 Q. And looking ahead to paragraph 17, which is on page 7, does
5 the order also require the "defendants," namely, Mr. Olins, "to
6 cooperate with and assist the receiver in the performance of
7 its duties"?

8 A. Yes, it does.

9 Q. And was one of your responsibilities -- so I am going to
10 use you and AB&T interchangeably as "the receiver." Is that
11 because you carried out the duties of AB&T as receiver?

12 A. Yes, correct.

13 Q. Or primarily you?

14 A. Primarily me, that's correct.

15 Q. Okay.

16 Was one of the responsibilities of the receiver to
17 come up with a liquidation plan within 90 days?

18 A. Yes, that was one of the duties of the receiver.

19 Q. And were you to submit that to the court for approval?

20 A. Yes, we were.

21 MS. MAGDO: And just to make sure the record is clear,
22 the government would like to formally offer these exhibits if
23 the court requires.

24 MR. DeVITA: No objection.

25 THE COURT: I'm not sure it is required but, in any

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1 event, admitted.

2 (Government's Exhibits 3 and 102 received in evidence)

3 BY MS. MAGDO:

4 Q. Mr. Rusco, are you familiar with a Sevres Garniture set of
5 three vases that was a receivership asset?

6 A. Yes, I am.

7 MS. MAGDO: I would like to pull up Government Exhibit
8 502, please.

9 THE COURT: You might need to spell some of those
10 words.

11 MS. MAGDO: We provided a glossary to the court
12 reporter in advance, anticipating that some of the spellings
13 might be unfamiliar.

14 BY MS. MAGDO:

15 Q. Are these the vases?

16 A. Yes, they are.

17 Q. We are just going to refer to them as "the vases," if
18 that's okay with you.

19 A. Okay.

20 Q. Did there come a time that you learned that there was a
21 buyer interested in purchasing the vases?

22 A. Yes, there was a time that I was contacted about that.

23 Q. And do you remember when that was?

24 A. It was, I think, the first part of May or so. Robert had
25 contacted me and let me know that Mallett or Henry Neville may

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1 have had an opportunity to sell the piece or had a prospective
2 buyer who was interested in the pieces.

3 Q. Are there any documents that would help you remember more
4 precise dates?

5 A. Yes. I kept a log of my phone calls and transactions that
6 I had done on those -- for those various things.

7 Q. I would like to show you Government Exhibit 200. Do you
8 recognize this?

9 A. Yes. That is the -- I actually kept two logs. This is the
10 first one I started in 2010. It is actually a printout of an
11 Outlook task that I used to log what I did with various things
12 related to the Argyle credit.

13 Q. Please take a look at Government Exhibit 201 now. Do you
14 recognize this?

15 A. Yes. That is another log that I kept when the receivership
16 began. It was based in an Excel spreadsheet instead of an
17 Outlook task document.

18 Q. You will notice that certain portions of this document are
19 blacked out.

20 A. Correct.

21 Q. Do you know who blacked those out?

22 A. No.

23 Q. Do you know whether they were produced to the government
24 with these blackouts?

25 MR. DeVITA: Your Honor, I will stipulate that they

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1 are designated as privileged.

2 MS. MAGDO: Okay.

3 THE COURT: All right. Thank you.

4 BY MS. MAGDO:

5 Q. So just to go back to the substance of Government Exhibit
6 201, what did you memorialize in this document?

7 A. In 201, various activities, phone calls, letters that were
8 issued.

9 Q. So let's take a look at the entry for -- actually there are
10 numerous entries from May 17. Did you make any notes of that
11 call that you just described with Mr. Olins?

12 A. Yes, I did. As you can see, there is a note that I made
13 for May 17. I had a telephone call from Robert. He indicated
14 that Henry had a prospective buyer for the Sevres garniture set
15 and wanted to know how we could proceed with the sale. The
16 receivership was fairly new, so I was unsure how we could
17 proceed prior to getting the plan filed that we were working
18 on, but we would look into it and see what we could do.

19 Q. So there is a reference in your notes to Henry Neville.
20 Who is Henry Neville?

21 A. Henry Neville was the president or director of the Mallett
22 New York office and the primary contact we had with Mallett.

23 Q. Did you subsequently have discussions with Mr. Neville
24 about the prospective buyer that Mr. Olins had told you about?

25 A. Yes, I did.

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1 Q. Based on your discussions with Mr. Neville, did you seek
2 court approval to sell the vases to Mallett so that Mallett
3 could, in turn, sell them to their prospective buyer?

4 A. Yes, we did.

5 Q. Please take a look at Government Exhibit 4. Do you
6 recognize this?

7 A. Yes. That's the receiver's application to sell certain
8 receivership assets.

9 Q. And you make certain representations about the transaction
10 to the court --

11 A. Yeah.

12 Q. -- right, in this application?

13 What was your understanding of how much the receiver
14 would get for the vases in this transaction?

15 A. We were to receive \$540,000.

16 Q. And that was based on -- how did you learn that?

17 A. Well, Henry told me that he had a prospective buyer, and he
18 looked liked like the price was going to be in the \$600,000
19 range; and, with the roughly 10 or so percent commission on
20 that, he would net to us 540.

21 Q. So your understanding was that Mallett would make a
22 commission on this sale?

23 A. Correct.

24 Q. So what did you understand the total amount of the sale to
25 be approximately?

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1 A. Well, initially we thought it was going to be about
2 \$600,000, and then it kind of developed into he was taking a
3 trade instead of all cash, so that the value of -- the total
4 value we thought was going to be in the range of 600 to 675 for
5 the total consideration on the purchase.

6 Q. With 675 as the upper limit?

7 A. Yes, 675 was the upper end.

8 Q. Did it matter to you how much Mallett was making on this
9 transaction?

10 A. Yes. I mean, we wanted to clearly communicate to the court
11 what the commissions were, and it was important for us to be
12 able to do that accurately, to the best -- so that's what --
13 why it was important to know what the value of the transaction
14 was and what they were going to make as a commission.

15 Q. Would it have mattered to the receiver if you had known
16 that Mallett had already sold vases for approximately twice as
17 much as they were telling you they would receive?

18 A. Yes, it would definitely matter.

19 Q. Would you have asked the court to approve the sale of the
20 vases to Mallett for \$540,000 if you had known that Mallett had
21 already sold them for over a million dollars?

22 A. No, I would not have asked the court to do that.

23 Q. Would it have mattered to you if you had known that Olins
24 was getting some portion of the sale proceeds?

25 A. Yes, it would have mattered.

Gck2oli1

Rusco - Direct

1 Q. Why?

2 A. Because he -- at this point he was not entitled to those
3 proceeds. The proceeds were to be used to pay down the bank
4 debt first and then ultimately the SEC debt.

5 Q. Did Mr. Olins ever disclose to you that he was to receive a
6 portion of the proceeds of the sale of the vases?

7 A. No, he did not.

8 Q. Would you have recommended the sale to the court if you had
9 known that Mr. Olins was getting some portion?

10 A. No, I would have not.

11 Q. What if he were getting a portion of the proceeds but not
12 in cash, say, a credit toward another antique? Would you have
13 recommended the sale?

14 A. No.

15 Q. Would it have made a difference to you whether he was
16 receiving the proceeds in cash, credit, or some combination?

17 A. No. The form of that payment was irrelevant.

18 Q. Okay. Are you familiar with a receivership asset which is
19 a set of gilt dragon candelabra?

20 A. Yes, I am.

21 Q. Can you take a look at Government Exhibit 500, please.

22 THE COURT: Counsel, can we just agree there is no
23 need to formally offer any exhibits? If it is shown, it will
24 be deemed to be in evidence.

25 MR. DeVITA: Yes, your Honor. Since the rules of

Gck2olil

Rusco - Direct

1 hearsay don't apply in a *Fatico* hearing, I have no objection,
2 for example, to Mr. Rusco's logs being accepted in evidence.

3 THE COURT: I will treat anything shown during the
4 hearing as in evidence unless there is an objection; which is
5 to say that the default is that it is in unless there is an
6 objection, in which case I will address it.

7 MR. DeVITA: That's fine, Judge.

8 THE COURT: You may proceed.

9 MS. MAGDO: Thank you.

10 BY MS. MAGDO:

11 Q. Is Government Exhibit 500 the dragon candelabra with which
12 you are familiar?

13 A. Yes, it is.

14 Q. Focusing your attention on the fall of 2012, did there come
15 a time that you learned of someone who might be interested in
16 purchasing the dragon candelabra?

17 A. Yes. Again, Robert Olins contacted me and said that he had
18 someone who might be interested in purchasing the item.

19 Q. By that time, had you already filed the receiver's
20 liquidation form with the court?

21 A. Yes, we had.

22 Q. And had the court approved the liquidation plan?

23 A. Yes, it had been approved.

24 Q. Did the liquidation plan include a minimum price for each
25 item in the receivership?

Gck2ol11

Rusco - Direct

1 A. Yes, it did.

2 Q. And were you allowed to sell an item at or above that
3 minimum price without seeking further court approval?

4 A. Yes, we were.

5 Q. And what was, to the best of your knowledge, the minimum
6 price based on?

7 A. It was based on generally the low estimate, low auction
8 estimate that we had for the items.

9 Q. And what was the minimum price for the dragon candelabra in
10 the liquidation plan?

11 A. \$200,000.

12 Q. Do you know whether that price was known to Mr. Olins?

13 A. Yes, it was.

14 Q. What was the name of the buyer to whom Mr. Olins introduced
15 you?

16 A. Bruce Jaeger.

17 Q. What was your understanding of the relationship between
18 Mr. Olins and Mr. Jaeger?

19 A. He was a longtime friend of Robert's.

20 Q. Did Mr. Jaeger make an offer to buy the dragon candelabra
21 from the receiver?

22 A. Yes, he did.

23 Q. Did you eventually agree upon a price?

24 A. We did agree.

25 Q. What was that?

Gck2olil

Rusco - Direct

1 A. It was \$235,000.

2 Q. Did Mr. Jaeger tell you whether he was planning to keep the
3 dragon candelabra on consignment after he purchased them?

4 A. He did indicate that he was going to keep it on consignment
5 with Mallett.

6 Q. In an effort to resell it.

7 A. Correct.

8 Q. So did you consider this to be an investment item for him
9 rather than an item that he was going to keep at home, for
10 example?

11 A. Correct.

12 Q. Prior to Mr. Jaeger's purchase of the dragon candelabra,
13 did Mr. Olins tell you that he was going to receive a share of
14 the proceeds from any resale?

15 A. No, he did not.

16 Q. And at any time, not just prior to the purchase, but at any
17 time, did Mr. Olins tell you that he was going to receive or
18 had received a share of the resale price?

19 A. No.

20 Q. If you had known that Mr. Olins was planning to take a
21 portion of the resale proceeds, would you have agreed to sell
22 the dragon candelabra to Bruce Jaeger for \$235,000?

23 A. No, I would have not.

24 Q. If you known that Mr. Olins was planning to use his portion
25 of the proceeds as a credit toward the purchase of another

Gck2011

Rusco - Direct

1 piece of artwork, would you have agreed to sell the dragon
2 candelabra?

3 A. I would have not.

4 Q. I would like to direct your attention to May 2012, to the
5 time when AB&T was appointed receiver. You testified that
6 Exhibit A lists all the assets subject to the receivership.
7 How was this list compiled?

8 A. That was compiled from the security documents that we had
9 for the assets that were pledged to our loan.

10 Q. Is that because the assets that had secured the loan were
11 identical to the assets in the receivership?

12 A. Yes, that's correct.

13 Q. And was Mr. Olins given the opportunity to review the list
14 in Exhibit A as far as you know?

15 A. As far as I know, yes, he was.

16 Q. Did you do anything to notify those individuals or entities
17 who were holding the assets that were subject to the
18 receivership?

19 A. Yes. After being appointed receiver, we prepared letters
20 to each of those parties that had possession of the assets and
21 asked them to confirm their possession of them and then to
22 await our instructions.

23 Q. Okay. So let's take a look at Exhibit A.

24 MR. DeVITA: I'm sorry. What exhibit number is this?

25 MS. MAGDO: This is still the receivership order,

Gck2ol1l

Rusco - Direct

1 Government Exhibit 3.

2 MR. DeVITA: 3.

3 MS. MAGDO: So Government Exhibit 3, page -- it is the
4 15th page. It is Exhibit A.

5 MR. DeVITA: Got it.

6 BY MS. MAGDO:

7 Q. So the very first item listed is a French -- a Louis XV
8 armchair that's listed as being in the possession of Will
9 Iselin in Paris.

10 A. Correct.

11 Q. Did you send a letter to this person?

12 A. Yes, I did.

13 Q. And did you hear back?

14 A. We did hear back from him.

15 Q. What did you hear back?

16 A. We heard back that he did not have possession of the item
17 and learned that it had been returned to the original dealer
18 that Robert bought it from because they had determined it had
19 been a forgery.

20 Q. From that letter, did you understand that that is something
21 that had happened since the receiver had been appointed in May?

22 A. No. It happened much earlier than the receivership.

23 Q. Was the armchair part of the bank's collateral for its loan
24 as of April 2009?

25 A. Yes, it was.

Gck2olil

Rusco - Direct

1 Q. If Mr. Olins had received a refund for the chair that
2 turned out to be fake, what should he have done with the money?

3 A. Those proceeds should have been paid to the bank in order
4 to pay down his loan.

5 Q. Had Mr. Olins -- so prior to your receiving this letter
6 from Mr. Iselin, had Mr. Olins ever disclosed to you that he
7 had received a refund for that armchair because it was fake?

8 A. No, he had not.

9 Q. And did Mr. Olins tell you at the time that this list was
10 compiled in May 2012, that he know longer owned that very first
11 item, the armchair?

12 A. He did not.

13 Q. Let's go to the next page, which is the second page of
14 Exhibit A. About a third of the way down, do you see the entry
15 for the Louis XV Savonnerie carpet purportedly located at
16 Sotheby's Paris?

17 A. Yes, I do.

18 MR. DeVITA: I'm sorry, which?

19 MS. MAGDO: So this is the second page of Exhibit A,
20 this is the eighth item, the Louis XV Savonnerie carpet.

21 MR. DeVITA: Got it.

22 BY MS. MAGDO:

23 Q. Just to read the rest of that entry, it says, "Per
24 defendants, this item is currently located in Versailles,
25 France, and is subject to the French government's claim of

Gck2ol11

Rusco - Direct

1 repatriation."

2 What did you understand that to mean?

3 A. Well, that's a shorthand for saying that the item had been
4 placed in auction in Paris and that the French government had
5 claimed a national treasure right on it. And it was
6 purportedly sold, but there was some issue about sales value
7 and who -- how much was to be paid, and that had not been
8 resolved at the time, at least our understanding, it had not
9 been resolved at the time of the receivership.

10 Q. So you mentioned that it had been put up for auction.

11 A. Correct.

12 Q. Do you remember when that was?

13 A. That was in October of 2008.

14 Q. And were you aware that it was put up for auction?

15 A. Yes, we were aware.

16 Q. And do you recall what the auction estimates were?

17 A. The low estimate was \$3 million and the high estimate was
18 \$5 million.

19 Q. And at the time that the carpet was put up for auction in
20 October 2008, was it collateral for AB&T's loan?

21 A. Yes, it was.

22 Q. So when the item was sold, what was to happen to the
23 proceeds pursuant to the loan agreement?

24 A. Pursuant to the loan agreement, the proceeds should have
25 been sent to American Bank & Trust to pay down the loan with

Gck2olil1

Rusco - Direct

1 Robert.

2 Q. And did you ever ask Mr. Olins, after October 2008, what
3 happened to the proceeds?

4 A. Yes, a number of times.

5 Q. And did you come to understand from him that the proceeds
6 were being held up somewhere in France?

7 A. That was my understanding. And he was concerned that the
8 price was not exactly what it should have been and the reserve
9 amount was not correct, and so he told me that there was some
10 dispute about that that he was trying to resolve and possibly
11 get a higher price for.

12 Q. And prior to May 2012, did Mr. Olins ever tell you that the
13 proceeds had in fact been freed up and distributed?

14 A. No, he had not.

15 Q. And you had repeated conversations with him about this
16 topic?

17 A. Yes, we did.

18 Q. So did you send, upon being appointed receiver, did you
19 send a letter to Sotheby's in Paris regarding their possession
20 of the carpet?

21 A. Yes, we did.

22 Q. And did you receive any reply?

23 A. Yes, we did.

24 Q. And what did you learn from the reply that you received
25 from Sotheby's?

Gck2olil

Rusco - Direct

1 A. We learned that they didn't have possession of the item and
2 the proceeds from the auction, net commission, had been
3 disbursed, a portion of it had been used to pay down an
4 outstanding debt that Robert had at Sotheby's, and then a
5 portion was sent to him at, I believe, his bank account at
6 Citibank.

7 Q. So let's just break that down. What was your understanding
8 from Sotheby's about the net proceeds? And by "net proceeds,"
9 I mean net of any commission, what the net proceeds of the sale
10 of that carpet were.

11 A. Approximately \$2.8 million.

12 Q. And you said that some portion of it was used to pay down
13 Mr. Olins' debt, some debt at Sotheby's in Paris, correct?

14 A. That's correct.

15 Q. And approximately what amount was used toward that?

16 A. \$2.3 million.

17 Q. Do you know whether that was a secured lien that Sotheby's
18 had or not?

19 A. I do not know.

20 Q. Did Mr. Olins ever disclose to you that there was a lien on
21 the carpet, secured lien on the carpet?

22 A. No.

23 Q. So you also said that Mr. Olins received some portion of
24 the sale proceeds. Approximately how much was that?

25 A. Approximately \$500,000.

Gck2ol11

Rusco - Direct

1 Q. Had Mr. Olins, had he ever disclosed to you that he had
2 received \$500,000 in proceeds?

3 A. No, he had not.

4 Q. And from the letter, did you understand that this had
5 happened since the receivership order had issued?

6 A. Since the -- no, it happened much prior to the receivership
7 order being issued.

8 Q. Do you have any understanding of what Mr. Olins did with
9 the \$500,000 that Sotheby's told you he received?

10 A. It's my understanding he used that money then to purchase a
11 lamp or actually a chandelier from Christie's, a portion of it.
12 I think it was, like, a little over \$600,000 that he had paid
13 for a lamp -- or a chandelier, not a lamp, and he put that 500
14 toward that purchase.

15 THE COURT: Can you tell me how you know that?

16 THE WITNESS: I think that came from communication
17 from his legal counsel in the receivership.

18 BY MS. MAGDO:

19 Q. Did that item that he purchased become a receivership
20 asset?

21 A. Yes, it did. It became a pledged asset to the bank and
22 then a receivership asset.

23 MS. MAGDO: Did the court have any other questions at
24 this point?

25 THE COURT: No.

Gck2ol11

Rusco - Direct

1 BY MS. MAGDO:

2 Q. And what should Mr. Olins have done with the \$2.8 million
3 in proceeds from the sale of the carpet in your opinion?

4 MR. DeVITA: Your Honor, I am going to object to what
5 Mr. Olins should have done. The testimony is that what cash he
6 got, he put into an asset that became pledged to the bank. The
7 question of whether Mr. Rusco has an opinion as to who had a
8 superior right, Sotheby's or AB&T, is irrelevant in terms of
9 the --

10 MS. MAGDO: Let me --

11 THE COURT: Why don't you rephrase the question.

12 BY MS. MAGDO:

13 Q. So if Sotheby's had a superior interest in the proceeds of
14 the carpet, is that something that Mr. Olins should have
15 disclosed to you when he pledged the carpet as collateral?

16 A. Yes.

17 Q. And if Sotheby's in Paris did not have a superior interest
18 in those proceeds, what should have happened with the \$2.3
19 million?

20 A. That should have been paid to American Bank & Trust. \$2.8
21 million should have been paid to the bank.

22 Q. And, to be clear, Mr. Olins did not pay \$2.8 million to the
23 bank, correct?

24 A. He did not.

25 Q. And he did not disclose that Sotheby's Paris had a superior

Gck2olil1

Rusco - Direct

1 interest in the carpet, correct?

2 A. He did not.

3 Q. After you learned -- after you heard back from Mr. Iselin
4 and Sotheby's in Paris, did you discuss -- did you have any
5 discussions with Mr. Olins about what you had learned?

6 A. Yes, I did.

7 Q. Tell me about that conversation or conversations.

8 A. We spoke by phone, and Robert was apologetic and
9 embarrassed about what had happened, and that was basically the
10 extent to which that conversation went.

11 Q. In connection with AB&T's opposition to the receivership,
12 did you file a declaration with the court in the Southern
13 District of New York.

14 A. Yes, I did.

15 Q. Let's take a look at Government Exhibit 2, at page 3,
16 please. Actually, just looking at Government Exhibit 2 as a
17 whole, is this your declaration?

18 A. Yes, it is.

19 Q. So directing your attention to paragraph 7 on page 3, so,
20 to be clear, in this document, when you refer to "loan
21 customers," I believe that's defined in paragraph 2 as "Argyle
22 Capital and Robert Olins," right?

23 A. Yes, that's correct.

24 Q. Essentially that's just Mr. Olins because you testified
25 earlier that he was the sole owner of Argyle Capital

GCK20LI1

Rusco - Cross

1 Management, is that correct?

2 A. Yes, that's correct.

3 Q. So looking at paragraph 7, you wrote, "During the past few
4 years, the bank has worked with the loan customers to effect
5 sales of the art collateral to reduce their indebtedness to the
6 bank under the loan. During this time, all sales of the art
7 collateral have been made with the bank's prior knowledge and
8 consent. In my dealings with the loan customers, I have not
9 found any reason to believe that their actions with respect to
10 our banking relationship and, in particular, the art collateral
11 and these sales, were fraudulent in any way."

12 When you submitted this declaration, were you aware of
13 what had happened to the armchair and to the carpet?

14 A. I was not aware.

15 Q. And based on what you now know, what you learned in 2012,
16 would you still characterize Mr. Olins' actions as "not
17 fraudulent in any way"?

18 A. I would not characterize them that way.

19 MS. MAGDO: No further questions.

20 THE COURT: Cross-examination.

21 MR. DeVITA: Thank you, your Honor.

22 CROSS EXAMINATION

23 BY MR. DeVITA:

24 Q. Good morning, Mr. Rusco. My name is James DeVita, and I
25 represent Mr. Olins. How are you today?

GCK20LI1

Rusco - Cross

1 A. I am doing fine.

2 Q. You mentioned in your direct testimony that the original
3 collateral for the loan was consisted primarily of stock in a
4 company called Spatia Light?

5 A. Excuse me. It was promissory notes from Spatia Light to
6 Argyle Capital and stock in Spatia Light.

7 Q. Okay. So both promissory notes from Spatia Light and
8 Spatia Light stock?

9 A. Stock and the negative pledge.

10 Q. Sorry?

11 A. Negative pledge.

12 Q. Negative pledge with respect to the art and antique
13 collection?

14 A. Right.

15 Q. What happened to Spatia Light?

16 A. Well, it is just, in a nutshell, it struggled along for a
17 while and eventually filed bankruptcy.

18 Q. So the stock that had been pledged became worthless?

19 A. No. The stock had at some point been liquidated, so we
20 paid down the loan.

21 Q. I see. So before the Spatia Light went bankrupt, you were
22 able to sell some of the stock and apply it against that?

23 A. Right. Robert did that.

24 Q. Robert did that.

25 And he paid the loan down with the proceeds from those

GCK20LI1

Rusco - Cross

1 sales?

2 A. Correct.

3 Q. And of course the promissory note became worthless.

4 A. Right.

5 Q. The government has said, by the way, in its submission in
6 this proceeding, that Mr. Olins resisted the sale of his
7 antiques collection. Is that an accurate statement?

8 A. Well, in some respects, yes, he did resist. He wouldn't
9 allow us in some cases in auctions to take a lower reserve than
10 the low estimate, which in one particular incident caused that
11 piece not to sell.

12 Q. So, in other words, when he was -- to the extent that he
13 resisted, it was because he thought too low a price was being
14 asked.

15 A. Right.

16 Q. Right.

17 Because he was asking that more be realized from the
18 sale in order to make you whole and to reduce his debt, right?

19 A. Correct.

20 Q. Okay.

21 So it's also true, though, that he introduced many
22 individuals and dealers to purchase antiques from his
23 collection to you, right?

24 A. He did.

25 Q. For example you mentioned Mr. Iselin, Will Iselin. He

GCK20LI1

Rusco - Cross

1 introduced you to Mr. Iselin?

2 A. He did.

3 Q. And Mr. Iselin made purchases of antiques from the
4 collection, correct?

5 A. Correct.

6 Q. And that resulted in a reduction of the outstanding debt?

7 A. That's correct.

8 Q. And Mr. Iselin made such purchases both before and after
9 the receivership, right?

10 A. I don't recall any before. It was only after the
11 receivership.

12 Q. Well, do you have your log? Maybe we can have Government
13 Exhibit 200, and look at the entry for -- and if you have it in
14 front of you, if you need to refer to it, do you see your entry
15 for February 26, 2010, if we can highlight that?

16 Now, this may not have resulted in a transaction, but
17 he was introduced, Mr. Olins introduced -- or was introducing
18 to you Mr. Iselin as somebody who -- as potential buyer for the
19 garniture and wall lights?

20 A. Correct.

21 Q. And then if we could turn to March 7, 2014, unfortunately
22 the pages are not numbered on your log, but it is
23 chronological. So March 7.

24 (Counsel confer)

25 MR. DeVITA: 14793.

GCK20LI1

Rusco - Cross

1 Q. There was a pending offer in March of 2014 for Mr. Iselin
2 for a schedule of items, correct? Do you see that on the entry
3 for March 7?

4 A. I haven't found that yet. I'm sorry.

5 Q. Maybe we can display it. If you look at the display, I
6 think it may be up there.

7 If you look at the bottom right corner, there are
8 numbers that are stamped on your log, and if you look at the
9 14793, they are sequentially numbered. So if you look at
10 147 -- can I approach, your Honor?

11 THE COURT: Yes, why don't you do that.

12 Q. If you look down here?

13 THE COURT: Why don't you just get him to the page?

14 MR. DeVITA: I will show with my marked copy, if
15 that's all right, your Honor.

16 THE COURT: Sure.

17 BY MR. DeVITA:

18 Q. Got it?

19 A. Right.

20 Q. That discussed offers for Mr. Iselin, right?

21 A. Yes, we did.

22 Q. And that was something Mr. Olins was instrumental in
23 bringing about, correct?

24 A. That is correct.

25 Q. Also there is a reference on that same day to someone named

GCK20LI1

Rusco - Cross

1 Steven Gelles.

2 A. Correct.

3 Q. That's another purchaser that Mr. Olins introduced to you,
4 correct?

5 A. That is correct.

6 Q. And this is after the receivership.

7 A. Right.

8 Q. And Mr. Gelles ultimately did make purchases, didn't he?

9 A. He did.

10 Q. Substantial purchases.

11 A. Yes, in a number of items, yes.

12 Q. A number of items, over hundreds of thousands of dollars?

13 A. I don't know that it was hundreds of thousands of dollars.

14 Q. Well, it was over a hundred thousand dollars.

15 A. Yes.

16 Q. Did Mr. Olins also introduce you to someone named Dean
17 Krechevsky?

18 A. Yes, he did.

19 Q. And Mr. Krechevsky made purchases from the estate, correct?

20 A. Yes, he did.

21 Q. And that was after the receivership?

22 A. Correct.

23 Q. And he introduced you to an individual named Barry Terhune?

24 A. Correct.

25 Q. And Mr. Terhune made purchases from the estate?

GCK20LI1

Rusco - Cross

1 A. Yes, he did.

2 Q. And that was after the receivership?

3 A. Correct.

4 Q. Mr. Olins introduced you to someone named Bhavin Shah,
5 isn't that right?

6 A. Yes.

7 Q. And Mr. Shah never made -- ultimately did make purchases
8 but was negotiating for a very large set of purchases from the
9 estate, isn't that right?

10 A. Yes.

11 Q. And isn't it a fact that Mr. Jaeger -- I'm sorry, Mr. Olins
12 was instrumental in seeking to bring that about?

13 A. Yes. He introduced me to the individual.

14 Q. Didn't he also agree to save you some money by traveling to
15 New York? He agreed to take Mr. Shah to the place where the
16 items were stored and show them, so that didn't you have to do
17 that yourself?

18 A. I made arrangements with the art storage facility for him
19 to inspect the property.

20 Q. And Mr. Olins took him there, is that right?

21 A. That I don't recall.

22 Q. Could you take a look at the entry for September 13, 2013.
23 Do you see that? Have you found that? It is -- the bottom
24 number is 14783. Do you have that?

25 A. Yes.

GCK20LI1

Rusco - Cross

1 Q. If you look at the entry for September 16, Robert offered
2 to meet Bob in New York City to show him the items in order to
3 save the receivership estate any travel expense?

4 A. Okay, yes.

5 Q. Does that refresh your recollection?

6 A. Yes, it does.

7 Q. Speaking of expenses, the receivership, in addition to
8 recovering -- I'm sorry, AB&T, in addition to recovering the
9 principal -- has recovered the principal on its loan, hasn't
10 it?

11 A. It has recovered its principal, yes.

12 Q. And it has recovered all of the interest that was due at
13 least prior to the order of priority that was set by
14 Judge Cote, isn't that right?

15 A. Correct.

16 Q. Including some default interest?

17 A. That's correct.

18 Q. And the default interest was 26 percent?

19 A. 26 1/2.

20 Q. 26 1/2 percent, okay.

21 And, in addition, the interest on the loan for a large
22 period of time was 5 percent, isn't that right?

23 A. It would have been in the 6 1/2 percent range.

24 Q. Oh, I'm sorry, 6 1/2 percent. And those are pretty
25 substantial interest rates for the time period we are talking

GCK20LI1

Rusco - Cross

1 about, aren't they?

2 A. Correct.

3 Q. And AB&T has recovered that?

4 A. We recovered it up through the May 11, 2012.

5 Q. Correct. Okay.

6 And expenses, as well, isn't that right, your travel?

7 A. Yes.

8 Q. Your attorney's fees?

9 A. Attorney's fees, yes.

10 Q. Is your travel here today being paid by the estate?

11 A. No.

12 Q. Okay. Is the government paying it?

13 A. Yes.

14 Q. Okay.

15 Lenora Lorenzo is another person that Mr. Olins
16 introduced you to, isn't it?

17 A. Yes.

18 Q. Isn't she?

19 A. Yes.

20 Q. And she also made a purchase --

21 A. Correct.

22 Q. -- from the estate.

23 So even after the receivership, Mr. Olins was actively
24 attempting to bring buyers to look at the collection, isn't
25 that right?

GCK20LI1

Rusco - Cross

1 A. Correct.

2 Q. And those efforts paid off, right?

3 A. They did. We closed those sales, yes.

4 Q. The experience prior to the receivership in terms of the
5 prices that were realized, am I correct in saying that the
6 performance was quite favorable in terms of the prices that
7 were realized? Prior to the receivership?

8 A. Prior to the receivership?

9 Q. Right.

10 A. By "favorable," you mean in what respect?

11 Q. At or above the minimum estimate.

12 A. At or above. Probably more like at the low estimates that
13 we had.

14 Q. Let me show you...

15 (Pause)

16 MR. DeVITA: Your Honor, I would like to show
17 Mr. Rusco Exhibit I to my letter of I believe it is November
18 29.

19 THE COURT: All right. That's fine. Go ahead.

20 MR. DeVITA: Since I am using this copy, may I stand
21 next to him and question?

22 THE COURT: Meaning you only have one copy?

23 MR. DeVITA: Well, I have another copy buried in
24 another file, but I am take it a little out of order.

25 THE COURT: As long as it is okay with the court

GCK20LI1

Rusco - Cross

1 reporter, it is okay with me.

2 BY MR. DeVITA:

3 Q. Exhibit I, it is dated April 4, 2011. All right. Let me
4 show you --

5 THE COURT: I think it is Exhibit I to the reply
6 submission.

7 MR. DeVITA: Correct, your Honor.

8 MS. MAGDO: Okay.

9 BY MR. DeVITA:

10 Q. And this is a report that you prepared, isn't it? Do you
11 recognize that report, Mr. Rusco? It is a loan review?

12 A. It is a loan review, but it is not something that I
13 prepared.

14 Q. Who prepares it?

15 A. Our loan review officer at the bank.

16 Q. So this summary and recommendation is not prepared by you
17 but by another person at the bank.

18 A. That's correct.

19 Q. But it is something that you reviewed at some point?

20 A. Yes. It would be part of the credit file for the bank.

21 Q. And if it is something you disagreed with, you would let
22 your superiors know that you disagreed with that conclusion.

23 A. Correct.

24 Q. And you see that in the summary and recommendation, there
25 is a section which says, "If we chose to, American Bank could

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Rusco - Cross

1 repossess the collateral, sell it at auction, and repay this
2 loan in full in less than six months. However, performance on
3 the credit has been good, Mr. Olins has been cooperative, sales
4 prices have been strong, and there appears to be no reason to
5 impose such requirement on the borrower. His sales plan,
6 which, to his benefit, provides maximum realized prices for the
7 items sold, has been providing adequate performance on this
8 loan."

9 That's a statement that you agreed with at that time?

10 A. Correct.

11 Q. So that the sales performance in the period leading up to
12 prior to the receivership was strong and the prices were
13 strong, is that fair?

14 A. They were reasonable, yes.

15 Q. What was the experience after the receivership in terms of
16 the prices realized on the assets that -- for example, the
17 assets that had to be sold at auction?

18 A. The auction estimates changed from the original amounts
19 that we had started out with with the receivership, and we saw
20 a decline in the market value.

21 Q. A decline in the realized sales price, isn't that right?

22 A. Well, at first initially a decline in the auction estimates
23 themselves and then a decline in the realized prices --

24 Q. And you don't know yourself how much of that was a result
25 of the receivership itself, do you?

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Rusco - Cross

1 A. It's hard to say. I do not know.

2 Q. But you believe it had an impact?

3 A. Well, that, and just the general timing of when we were
4 selling things, the indication I had gotten from Christie's was
5 that the values and the type of assets that he had in his
6 portfolio were suffering some decline.

7 Q. But to your -- in your view, there is no question in your
8 mind, is there, that the receivership and the publicity or the
9 public awareness of that had an impact, isn't that right?

10 A. That was our view in the beginning, yes. I wouldn't say
11 that's the case now.

12 Q. I want to draw your attention to June 2010, Mr. Rusco, and
13 ask you if you could take a look at that period of time in your
14 log, starting at 14760.

15 Have you been able to find that?

16 A. Yes.

17 Q. Drawing your attention to June 1, there is a reference
18 there, is there not, to a transaction involving some wall
19 lights?

20 A. That's correct.

21 Q. And just if you could take a moment to refresh -- to read
22 to yourself the entries from June 1 through June 8.

23 (Pause)

24 Q. While you are doing that, I am also going to hand --
25 actually, I don't have the exhibit tags.

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Rusco - Cross

1 MR. DeVITA: Your Honor, I don't have exhibit tags. I
2 had them in my desk drawer. I forgot to bring them with me, as
3 one always does, so I am going to ask that we mark a document
4 as Defense Exhibit A for today's hearing and I will just write
5 on and Mr. Cecutti will keep track.

6 THE COURT: All right. Do you have copies for me?

7 MR. DeVITA: I do, your Honor. That's my point. I
8 noticed that I did not have exhibit numbers or tags to put on
9 them. I have a copy for the court. I am going to hand a copy
10 to Mr. Rusco, a copy to Mr. Cecutti, so he can help me keep
11 track of my offerings here.

12 Q. I don't want to interrupt you, Mr. Rusco, if you are still
13 reading those entries.

14 A. Give me a minute.

15 Q. Go ahead. Let me know when you are finished.

16 (Pause)

17 A. Okay.

18 Q. Okay. Let me ask you to look at what I have marked as
19 Exhibit A. Actually maybe I can write on your copy. I am
20 going to put "delta" for "defense" and "X" for "exhibit" "A,"
21 so we know what we are talking about.

22 That's a signed agreement covering some of the assets
23 that were part of the estate, is that right? This is prior to
24 the receivership obviously.

25 A. Yes it was.

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Rusco - Cross

1 Q. At the bottom, it refers to American Bank & Trust Company
2 and an account number.

3 A. Correct.

4 Q. That was the account for Argyle's repayment, is that
5 correct?

6 A. Yes, that was their checking account.

7 Q. Are you familiar with this document? Did you see this
8 consignment agreement at the time?

9 A. Yes, I did.

10 Q. And it shows, if you would, the second item, Louis XV
11 Ormolu three branch wall lights attributed to Jacques Caffieri.
12 I think I am saying that right. Do you recognize that?

13 A. Yes, I do.

14 Q. Are those the same wall lights that are referenced in your
15 notes on June -- in June of 2010?

16 A. Yes, they are.

17 Q. And the consignment price on these is \$1,750,000, right?

18 A. That's correct.

19 Q. And according to the notes that you made at the time, these
20 are contemporaneous, right?

21 A. Well, the notes were in 2010.

22 Q. I meant contemporaneous to when the events occurred.

23 A. Yes.

24 Q. So there was an offer that would have resulted in a net
25 price to Robert, Mr. Olins, of \$1,400,000?

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Rusco - Cross

1 A. Correct.

2 Q. There came a time when Mr. Olins expressed some concern to
3 you about that offer, is that correct?

4 A. Yes.

5 Q. Let me ask that we mark as Defense Exhibit B, an e-mail
6 dated June 5, 2010.

7 THE COURT: Just careful of the wires when you walk
8 back and forth, please.

9 MR. DeVITA: I will, your Honor.

10 Q. Mr. Rusco do you recall receiving that e-mail from
11 Mr. Olins, Mr. Rusco?

12 A. Yes, I recall.

13 Q. Mr. Olins is expressing to you concern that someone on the
14 selling side -- whether it is Mr. -- who is Glenn Randall, by
15 the way?

16 A. Glenn Randall was a consultant. He is also an art dealer
17 Robert had used from time to time to help him with various
18 transactions.

19 Q. And he was working with Mallett on this transaction?

20 A. I believe so, yes.

21 Q. And Mr. Olins was saying to you he was suspicious about the
22 price at which the chandelier -- I'm sorry, the wall lights
23 were being sold, right?

24 A. Correct.

25 Q. Having refreshed your recollection by looking at your

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Rusco - Cross

1 notes, do you recall what your reaction was?

2 A. Well, at the time, we didn't know for sure what Mallett was
3 going to be selling them for, but we felt like the million four
4 was a reasonable price and he should proceed with accepting
5 that proposal.

6 Q. So basically you pressured him into taking that price.

7 A. Well, we thought it was something that he needed to do
8 because it was --

9 Q. You wanted to close the deal?

10 A. We wanted to close the deal.

11 Q. Correct.

12 And you say that you talked to Frank about Robert's
13 perspective. Who is Frank?

14 A. Frank Henke is the owner of American Bank & Trust.

15 Q. And Frank told you that the transaction needs to close,
16 right?

17 A. Right.

18 Q. And he is your boss?

19 A. He is my boss.

20 Q. And you told Robert Olins the transaction needs to close,
21 right?

22 A. Correct.

23 Q. Notwithstanding his suspicions.

24 A. I didn't have anything to say one way or the other that
25 there was anything about what Mallett was selling the items

GCK20LI1

Rusco - Cross

1 for, so I didn't see that there was any reason to question the
2 transaction.

3 Q. You didn't think there was any reason to question Mallett?

4 A. No.

5 Q. Even though Mr. Olins told you there might be some reasons
6 to question.

7 A. Right.

8 Q. The entry for June 8 says you also talked to someone
9 named -- or initials CGM. Who is that?

10 A. That was Charles Meckfessel, Chuck Meckfessel, the
11 president of the bank.

12 Q. All right. So the president and the owner of the bank
13 said that you should not do anything to jeopardize the
14 transaction?

15 A. Right.

16 Q. Can you look at your entry for June 16, actually June 15.
17 Do you have that now? It refers to, about three quarters of
18 the way down on that entry, "Talked to Glenn Randall re: sales
19 confirmation. He will discuss with Henry Neville and get back
20 to me. Talked to Robert, told him that Glenn will be
21 discussing the request for sales price confirmation with
22 Henry."

23 Do you recall that?

24 A. Yes.

25 Q. So at Mr. Olins' request, you were asking Mallett and Glenn

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Rusco - Cross

1 Randall to confirm what they sold those wall lights for, right?

2 A. No. We were wanting to just get confirmation that the
3 money had been sent to us.

4 Q. Well, hadn't you requested Glenn to confirm what the sales
5 price was?

6 A. You are talking about the June 15, 2010, entry?

7 Q. Yeah. This is after you received the money, right?

8 A. No.

9 Q. Well, if you look just before it, it says on June 15, it
10 says, "Wire transfer for the \$1,400,000 was received" then it
11 says, "Talked to Glenn Randall re" sales confirmation. He will
12 discuss with Henry Neville and get back to me."

13 A. Okay. I guess I am not seeing that. Just a second.

14 THE COURT: If you look at the screen, it is on there,
15 Mr. Rusco.

16 THE WITNESS: Okay. Yes, I see that, correct.

17 Q. So you were asking Glenn Randall to confirm what they sold
18 this item for, right? And then after that you talked to
19 Robert, "I told him that Glenn will be discussing the request
20 for sales price and confirmation with Henry."

21 A. Right.

22 THE COURT: Mr. DeVita, you need to let him answer the
23 questions.

24 Is it correct that you are confirming the sale?

25 THE WITNESS: Yes, we had asked him if we could

GCK20LI1

Rusco - Cross

1 confirm the sale price.

2 BY MS. MAGDO:

3 Q. And the sale price they had told you was \$1,600,000, right?

4 A. That's correct.

5 Q. And then I ask you to look at your entry for June 17, I'm
6 sorry, June 16. It says, "Glenn Randall called at about 12
7 p.m. He indicated that Mallett's and his position is that they
8 cannot provide documentation of the \$1,600,000 sales price.
9 Due to sensitivity concerns with the buyer, they both felt that
10 the client might decide to rescind the transaction if he were
11 to find out that a third party was in possession of such
12 documentation."

13 Do you see that?

14 A. I do.

15 Q. That's what he told you.

16 A. Right.

17 Q. Then he says, "On future deals, they will try to obtain, if
18 such is stipulated as part of the acceptance of a variance for
19 the price, in the Randall consignment," correct?

20 A. Correct.

21 Q. And then you told Robert about that conversation, right?

22 A. Correct.

23 Q. And then you told him that you didn't want to do anything
24 to jeopardize any future sales through Mallett, right?

25 A. Correct.

GCK20LI1

Rusco - Cross

1 Q. Now, would it surprise you to learn that Mallett in fact
2 sold those wall lights for \$1,750,000?

3 A. Yes, it would surprise me.

4 Q. Let me show you -- let me ask that we mark as Defendant's
5 Exhibit -- what are we up to? D?

6 MR. CECUTTI: C.

7 MR. DeVITA: C.

8 (Pause)

9 Q. Is that a form that you recognize, Mallett's invoices?

10 A. Yes, it is on their letterhead and has their address and so
11 forth.

12 Q. And the description, the date of this is June 2. It is
13 prior to your conversation with Mr. Randall, right?

14 A. Right.

15 Q. And the description of the property is the same three
16 branch wall lights that we have been talking about, correct?

17 A. Yes, that's correct.

18 Q. And the amount reflected as the purchase -- or the sale
19 price, of course, the purchaser is redacted. You see that.

20 A. Right.

21 Q. So you were never told who the purchaser was.

22 A. No, I was never told.

23 Q. And we don't know because it has been redacted.

24 But it does indicate that they were sold for
25 \$1,750,000, is that right?

GCK20LI1

Rusco - Cross

1 A. Yes.

2 Q. And you were not aware of that.

3 A. I was not aware of that.

4 Q. And you would urge Mr. Olins not to press the issue because
5 you didn't want to jeopardize the relationship with Mallett,
6 right?

7 A. Well, we had several things on consignment there. We
8 wanted to continue selling things through them.

9 Q. So you had urged Mr. Olins not to press the issue because
10 you didn't want to jeopardize the relationship with Mallett.

11 A. Correct.

12 Q. Now, do you recall a time when Mr. Olins asked you to allow
13 him to take money from proceeds of sales for legal fees?

14 A. Yes, I recall that.

15 Q. And do you also remember him requesting you to advance
16 funds to help pay an SEC judgment?

17 A. Correct.

18 Q. And that occurred, did it not, also in June of 2010, right?

19 A. Correct.

20 Q. And if we turn to your log for June 11 -- I'm sorry, June
21 14. No. I'm sorry. I beg your pardon. June 10. Actually,
22 let's go first to June 2, 2010, bottom of the page, reads
23 146760. That refers to the proceeds from the sale of these
24 wall lights, does it not, \$1,400,000?

25 A. Yes, that's correct.

GCK20LI1

Rusco - Cross

1 Q. And Robert needs \$1240,000 of that for legal fees?

2 A. Correct.

3 Q. And this was in connection with the SEC action, right?

4 A. I believe so.

5 Q. And so you knew about the SEC action as early as June of
6 2010.

7 A. Correct.

8 Q. And it says, "Talked to FXH, and he agreed to providing
9 \$140,000 to Robert as requested." FXH, I think you testified,
10 is the owner of the bank?

11 A. Yes, correct, Frank Henke.

12 Q. Henke?

13 A. Henke.

14 Q. And then if you go over to June 10, at the very last
15 sentence on that, it says, "Part of the \$140,000 from the wall
16 lights proceeds will pay the first \$45,000 installment due
17 under the order, changed due to" -- I'm sorry. This refers to
18 a judgment that came down, money judgment, on that date, June
19 10, right?

20 A. Correct.

21 Q. And Mr. Olins told you about it right away.

22 A. I don't recall exactly when the money judgment -- I guess
23 it was entered that day, and he needed to pay some portion of
24 that on the date that it was entered. So, yes, that's correct.
25 He told me that.

GCK20LI1

Rusco - Cross

1 Q. It was due on June 11, according to your note.

2 A. Yeah.

3 Q. And it says, "Robert" -- "talked to Robert about my
4 conversation with Glenn Randall and about the SEC monetary
5 judgment that was entered today."

6 So the judgment was entered on June 10?

7 A. Correct.

8 Q. And you and Robert agreed that part of the \$140,000 that he
9 thought was going to be available to pay his legal fees would
10 be used to pay the first installment under that judgment, is
11 that right?

12 A. That's correct.

13 Q. Did there come a time when you advanced more funds to help
14 him pay the SEC -- that SEC judgment from June of 2010? And
15 maybe I can help you. If you look at your entry for June 21.

16 A. Right. There were -- the requests, we had sold the zodiac
17 figure, and he had requested \$90,000 of that to pay two
18 additional installments on the SEC --

19 Q. So that's a total of \$135,000 that Mr. Olins is adding to
20 his debt to you so that he can pay the SEC, right?

21 A. Effectively, yes. I mean, he is not paying it down,
22 so . . .

23 Q. Do you still have Exhibit A, Mr. Rusco, the consignment
24 agreement? Is that still up there with you?

25 A. Yes, it is.

GCK20LI1

Rusco - Cross

1 Q. Okay.

2 If you would look at the first item on the
3 consignment, a Louis XIV boule chandelier. Do you see that?

4 A. Correct.

5 Q. And the consignment price is \$1,600,000, correct?

6 A. Correct.

7 Q. Now, did there come a time when that was sold?

8 A. Yes. That item was sold.

9 Q. By Mallett, right?

10 A. Correct.

11 Q. I draw your attention to your entry, the entry in your log
12 for December 15, 2010. Do you see that there is a reference
13 actually on the 14th and the 15th to that particular
14 transaction. Do you see that? The 14th, it says, "Various
15 e-mails of phone calls throughout the day regarding proposal on
16 the chandelier at Mallett," and then it says, "After some
17 e-mail correspondence, Robert called to say that Henry was
18 agreeable to the net amount of \$1,350,000 with a \$50,000 store
19 credit for Robert."

20 Do you see that?

21 A. Yes, I do.

22 Q. So that's considerably less than the consignment price,
23 right?

24 A. Yes, that's less than the consignment price.

25 Q. And the consignment price, the \$1,600,000 is what is

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Rusco - Cross

1 supposed to be net to the consignee, right? Consignor.

2 A. Correct.

3 Q. So even with the \$50,000 store credit, it is \$200,000 less,
4 right?

5 A. Correct.

6 Q. Do you know -- and that was something that was the subject
7 of some back and forth as reflected in your notes, right?

8 Robert, Mr. Olins was resisting going down on that?

9 A. I don't recall specifically, but yes.

10 Q. Well, do you recall that he wanted more for that?

11 A. Well, I believe so, yes.

12 Q. Would it surprise you to learn that Mallett sold that
13 chandelier for \$2,700,000?

14 A. Yes.

15 Q. I have marked Defendant's Exhibit D. You are familiar with
16 the name Henry Neville, is that correct?

17 A. Yes, I am.

18 Q. The first page is an e-mail reflecting a stock sold by
19 Henry Neville, invoice gross \$,2,700,000. Do you see that?

20 A. I do.

21 Q. If you turn over to the second page of the exhibit, and you
22 look at the description, is that the same chandelier we have
23 been talking about?

24 A. I believe it is.

25 Q. So you were not aware that Mallett sold this for

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Rusco - Cross

1 \$2,700,000?

2 A. No, I was not.

3 Q. This was still prior to the receivership, is that right?

4 A. That's correct.

5 Q. Did you get the SEC's agreement to that transaction? It
6 was after the restraining notice -- I'm sorry this is 2010.
7 I'm sorry. My fault. Sorry.

8 Did there come a time when Mr. Olins asked you to
9 advance funds so that -- let me strike that.

10 Did there come a time when you learned that a court in
11 California had rendered a judgment requiring Mr. Olins to
12 disgorge over \$3 million?

13 A. Yes, there came a time when I learned of that.

14 Q. And that was in 2011, correct?

15 A. Yes.

16 Q. Drawing your attention, if you could look at your log, for
17 March 11, 2011, and then March 23, 2011, you had conversations
18 with Mr. Olins and Frank -- that's the owner of the bank --
19 about the SEC matter, right?

20 A. Yes, we did, March 10 and March 11, 2011.

21 Q. And you had a conversation with the attorney for the SEC, a
22 Mr. Silverman, is that right? If you look at your entry for
23 June -- I'm sorry, I am ahead of myself. We are still talking
24 about the earlier period.

25 Did there come a time when Mr. Olins requested

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Rusco - Cross

1 funds -- requested the bank to advance funds in order to
2 provide money for him to appeal that SEC decision -- the court
3 decision on the SEC case?

4 A. As far as an appeal, no, I don't recall that he had ever
5 requested that we advance funds to appeal the case.

6 Q. Let me show you what we previously marked as Exhibit G on
7 my --

8 MR. DeVITA: Actually rather than confuse it, I will
9 make it Exhibit E. It will be easier, your Honor. This was a
10 previously submitted exhibit from the -- my November 29
11 submission.

12 BY MR. DeVITA:

13 Q. Let me show you what's been marked Exhibit E, Mr. Rusco.
14 This is an e-mail from Mr. Olins to you.

15 Do you recall that?

16 A. Yes, it is, correct.

17 Q. This is his e-mail to you discussing the timing for the
18 appeal from the decision in the SEC case, right? Take your
19 time to read it.

20 A. I am.

21 (Pause)

22 A. Yes, the topic was about his plans to pursue some kind of
23 appeal.

24 Q. Right. And he mentioned that he had discussions with
25 lawyers from a firm called Proskauer?

GCK20LI1

Rusco - Cross

1 A. Yes.

2 Q. Is that a firm that you had heard of?

3 A. Only at that time.

4 Q. So you didn't have any prior familiarity.

5 A. No.

6 Q. You also mentioned that he had been represented by a firm
7 called Ropes & Gray?

8 A. Correct.

9 Q. Is that a firm that you were familiar with?

10 A. No.

11 Q. But you understood from this e-mail that their legal fees
12 were pretty high?

13 A. Yes, it was pretty clear.

14 Q. With respect to both of those firms.

15 A. Well, one greater than the other.

16 Q. Right.

17 And there came a time, did there not, when Mr. Olins
18 specifically requested that you advance \$100,000 to help fund
19 that appeal, is that right?

20 A. Yes. He had contacted us in May regarding the \$100,000
21 advance.

22 Q. If you looked at your log for March 11 -- I'm sorry,
23 March -- I'm sorry, April, April 21.

24 A. Right.

25 Q. It says you sent Robert an e-mail regarding the \$100,000

GCK20LI1

Rusco - Cross

1 readvance request. Do you know if that relates to the legal
2 fees?

3 A. It doesn't reference in my notes, but...

4 Q. Let me show you what is marked as Defendant's Exhibit F,
5 what I will mark as Defendant's Exhibit F. That is an April 19
6 e-mail -- I'm sorry, April 19 e-mail, not the top one, but
7 there is an e-mail from you to Mr. Olins asking some details
8 about the \$100,000 readvance to prepay Ropes & Gray, is that
9 right?

10 A. That's correct.

11 Q. So if you would turn over to the second page of that
12 exhibit, there is a reference -- there is an e-mail from
13 Mr. Olins going into some detail, starting out by saying, "I
14 need you to be my advocate again," essentially asking you to
15 help him get the \$100,000, right?

16 A. Right.

17 Q. And he refers to the \$500,000 estimated by Proskauer,
18 right?

19 A. Yes.

20 Q. And then a lesser amount from a small California firm.
21 Then it says "if Critchley, Kinum & Vasquez stayed in the
22 case." Do you know who that is? Are you familiar with that
23 firm?

24 A. I knew they were involved in some way, but I don't recall
25 in specific how they were.

GCK20LI1

Rusco - Cross

1 Q. Was his attorney someone named John Vasquez?

2 A. I believe so, that's correct.

3 Q. Did you have any conversations with John Vasquez?

4 A. I think we did at some point, but I don't recall any
5 particulars of them.

6 Q. Do you know if he is a federal judge now?

7 A. I don't know.

8 Q. There is a further discussion about your making -- oh, it
9 says, "As always, please feel free to speak with Rick Marshall
10 directly." Do you see that?

11 A. Correct.

12 Q. Rick Marshall was the attorney at Ropes & Gray who had
13 represented Mr. Olins?

14 A. Right.

15 Q. Did you in fact speak to Mr. Marshall?

16 A. I don't recall specifically if I did or not.

17 Q. You don't know one way or the other?

18 A. No.

19 Q. But certainly Mr. Olins invited you to?

20 A. Yeah, correct.

21 Q. Then I think we saw earlier --

22 MR. DeVITA: Did we mark this as an exhibit? We never
23 marked the loan review document from April of 2011 as an
24 exhibit. Should I mark it? We referred to it, your Honor, but
25 didn't mark it separately. Should I make it Exhibit G?

GCK20LI1

Rusco - Cross

1 THE COURT: Sure.

2 MR. DeVITA: Okay.

3 THE COURT: Just to be clear, this is I think Exhibit
4 I to your reply letter, is that right?

5 MR. DeVITA: I think that's correct, your Honor.

6 THE COURT: Okay.

7 MR. DeVITA: Your Honor, just to confuse the record
8 more, it is also Exhibit B to our original submission, so it
9 now has B, G, and I.

10 THE COURT: All right. I think we can leave it there.
11 I had already noticed that was the same document.

12 BY MR. DeVITA:

13 Q. I would ask you to look at the last page of that exhibit,
14 and does that reflect that the proposed readvance of \$100,000
15 was approved?

16 A. Yes, it does.

17 Q. Are you one of the people -- I see a number of different
18 signatures at the bottom, or initials -- are you among the
19 initialers?

20 A. Yes, I am.

21 Q. And which one would be you?

22 A. GWR.

23 Q. Okay. So you initialed it twice, once for approval and
24 once for ABT loan policy compliance?

25 A. Correct.

GCK20LI1

Rusco - Cross

1 Q. Okay.

2 Now, to your knowledge, did that appeal ever go
3 forward?

4 A. I don't recall.

5 Q. Let me show you what's been marked -- what I will mark as
6 Defense Exhibit H.

7 MR. DeVITA: Which, for the sake of completeness, that
8 was Exhibit J to my November 29 letter, your Honor. It is
9 hearing Exhibit H.

10 BY MR. DeVITA:

11 Q. Mr. Rusco, is that an e-mail you received from Mr. Olins?
12 Do you recall that?

13 A. Yes, that's an e-mail that's addressed to me.

14 Q. Take a moment to read it.

15 A. Okay.

16 (Pause)

17 A. Okay. I have read it.

18 Q. Okay. So it indicates problems coming up with respect to
19 Ropes & Gray and the \$100,000, right?

20 A. Right.

21 Q. Do you recall that in fact the \$100,000 was never advanced
22 to Ropes & Gray?

23 A. I don't recall one way or the other on that.

24 Q. At the bottom of the e-mail, you see it says, "Would you
25 mind speaking with Rick sometime today?"

GCK20LI1

Rusco - Cross

1 That refers to Rick Marshall again?

2 A. Correct.

3 Q. "I will ask him to call you."

4 Do you recall whether you did speak to Mr. Marshall?

5 A. The only thing that would help me with that recollection
6 would be looking at my log.

7 Q. Well, I could, if you don't mind my shortcutting, there is
8 no reflection in your log of any conversation in April of 2011
9 with Mr. Marshall?

10 A. So I don't recall that I did.

11 Q. If you did, would you have put it in your log?

12 A. Yes.

13 Q. Okay. So the fact that it is not there suggests that it
14 didn't take place.

15 A. Right.

16 Q. Now, do you recall, as part of the issue of an appeal, any
17 conversation regarding trying to settle the case, the SEC's
18 judgment? Do you recall any discussion about that?

19 A. Yes, we had conversation with Robert about that
20 possibility.

21 Q. And in connection with that, were you also discussing a
22 mediation that had taken place?

23 A. I don't recall that specifically.

24 Q. Well, let's take a look at your entry for April 27, 2011.
25 Do you see that?

GCK20LI1

Rusco - Cross

1 A. Yes, I do.

2 Q. And it says that you -- TT stands for "talked to," correct?

3 A. Yes he.

4 Q. "Talked to Robert regarding the SEC case. Court mediator
5 thinks a settlement in the high 6 or low 7 range would be
6 reasonable."

7 Do you recall that? Does that refresh your
8 recollection?

9 A. Yes, it does.

10 Q. And did Mr. -- do you recall that Mr. Olins told you that
11 the mediator was the chief magistrate judge for the Northern
12 District of California?

13 A. I don't recall that specifically, no.

14 Q. But you do recall discussion about the mediator
15 recommended?

16 A. Right.

17 Q. Did there come a time when AB&T became involved in trying
18 to encourage the settlement?

19 A. Yes.

20 Q. I started to draw your attention, if you look to June 16,
21 2011, there is a reference in your log to a conversation with
22 John Silverman of the SEC. Do you see that?

23 A. Yes, I do.

24 Q. Do you recall what that conversation was?

25 A. Essentially John was saying that he wanted to proceed with

GCK20LI1

Rusco - Cross

1 getting the assets sold and was at that point considering
2 receivership.

3 Q. Did you discuss settlement at all?

4 A. Not at that time.

5 Q. Not at that time.

6 Take a look at your entry for August 31, 2011.

7 A. Okay.

8 Q. There is a reference there, "Talked to Robert Olins, our
9 legal counsel, about the possibility of settling the SEC
10 matter. Robert will contact John Vasquez."

11 Was that one of Robert's lawyers?

12 A. I believe that's the one you mentioned earlier.

13 Q. Right. We saw he was the third name in that firm name,
14 right?

15 A. Right.

16 Q. And at this time also, if you look at August 26, 2011, the
17 SEC had served its restraining order, right?

18 A. Right.

19 Q. Restraining notice?

20 A. Yes. That's often been confused that way, but . . .

21 Q. Yes.

22 And I notice that on September 6, 2011, you received a
23 copy of Mallett's response to the SEC subpoena and restraining
24 order, is that right?

25 A. That's correct.

GCK20LI1

Rusco - Cross

1 Q. And then you sent a copy to Robert of that.

2 A. Correct.

3 Q. So you knew in September of 2011 that Mallett had been --
4 had received the restraining notice and, in fact, had provided
5 information about what it had in its possession?

6 A. Correct.

7 Q. But getting back to the settlement issue, do you recall
8 what settlement offers were made at the time that these
9 conversations were taking place?

10 A. I do not recall specifically. I know we had talked about
11 it various . . .

12 Q. Do you remember that AB&T offered to loan Mr. Olins a
13 million dollars to try and settle?

14 A. Yes. I remember that we were considering a loan to --

15 Q. In fact, that was subsequently raised to a million and a
16 half, right?

17 A. Yes.

18 Q. And Mr. Olins was open to that idea, right?

19 A. Yes, he was.

20 Q. But the SEC was not.

21 A. No, they were not.

22 Q. And the million -- whatever money was advanced to settle
23 the SEC case would have been added to Mr. Olins' debt to the
24 bank --

25 A. Correct.

GCK20LI1

Rusco - Cross

1 Q. -- to be paid out of the collateral.

2 A. That's correct.

3 THE COURT: Mr. DeVita, any estimate on how much
4 longer you expect to be on cross?

5 MR. DeVITA: I would say, your Honor, another half
6 hour.

7 THE COURT: Okay. I want to take some pity on the
8 court reporter, so is this a good time to take a break?

9 MR. DeVITA: This is a good time.

10 THE COURT: Why don't we break for five or ten minutes
11 and then we will be ready to go. Thanks.

12 (Recess)

13 MR. DeVITA: May I continue, your Honor?

14 THE COURT: You may.

15 Mr. Rusco, you are still under oath.

16 You may proceed.

17 MR. DeVITA: Thank you, your Honor.

18 BY MR. DeVITA:

19 Q. Mr. Rusco, just to follow up with something you had
20 testified on direct examination, you mentioned that there was
21 an outstanding loan that Mr. Rusco had with Sotheby's that
22 related to the sale of the carpet, is that correct?

23 THE COURT: I think you misspoke.

24 THE WITNESS: Yes.

25 A. You said Mr. Rusco had a loan with Sotheby's.

GCK20LI1

Rusco - Cross

1 Q. I'm sorry, Mr. Olins had a debt to Sotheby's.

2 A. Yes, that's correct.

3 Q. That debt was reflected on his balance sheet that he
4 provided to the bank, wasn't it?

5 A. I would have to look at the balance sheet at the time for
6 that record, but I believe so.

7 Q. Okay.

8 Now, I want to bring your attention to June of 2012.
9 Was there an item in the estate, two items, Swedish -- some
10 Swedish globes? Do you recall that?

11 A. Yes.

12 Q. And did there come a time when Mr. Neville told you that he
13 had a buyer for the Swedish globes?

14 A. Yes.

15 Q. Do you recall when that was?

16 A. Not specifically.

17 Q. Do you have your Government Exhibit 201 in front of you?
18 That's the other log, the receivership log.

19 A. Right.

20 Q. Do you see that?

21 A. Yes.

22 Q. I draw your attention to the entry for June 18, 2012. It
23 is on page 5. It refers to a telephone call from Henry
24 Neville, "Called to let me know" -- "called to confirm that we
25 received the wire transfer for the garniture set." That's the

GCK20LI1

Rusco - Cross

1 vases we were talking about earlier?

2 A. Correct.

3 Q. And then it says "and to let me know about the items
4 Mallett would like to show next week at The Masterpiece."

5 A. Correct.

6 Q. What was Masterpiece?

7 A. It was an art and antiques show that occurred annually I
8 believe in London.

9 Q. And it was in June of -- it was June of the year or the
10 spring of the year?

11 A. Well, in the June time frame.

12 Q. Okay. And Mr. Olin -- Mr. Neville was discussing some
13 items he wanted to bring -- he said he wanted to bring to show
14 at that fair?

15 A. Correct.

16 Q. Were the Swedish globes among those items?

17 A. I believe they were.

18 Q. So, to the best of your recollection, on June 18, is this
19 the first suggestion of an effort by him to sell those globes?

20 A. Yes.

21 Q. And then if you could turn to June 27 -- I'm sorry, let's
22 start with June 29. It says, "Reported that he had an
23 interested buyer in the globes and that a client had asked to
24 see the dragon candelabra."

25 On June 29 he was telling you that he had someone who

GCK20LI1

Rusco - Cross

1 was interested in buying the globes.

2 A. Correct.

3 Q. So obviously that would mean that he had not sold them
4 before then, right?

5 A. Right.

6 Q. Right.

7 And I draw your attention back to the entry on June
8 27. It says, "He indicated that he would not be able to
9 disclose names of buyers, but the prices and commissions were
10 workable for him. I indicated to him that we understood the
11 issue with the disclosure of the names of the buyers and can
12 work around that issue."

13 Now, was that related to any specific sale or is that
14 in general?

15 A. Well, it certainly related to the items he was taking to
16 the Masterpiece.

17 Q. Did it also have any connection to the vases?

18 A. Not to my recollection. We had already sold the vases by
19 that time.

20 Q. But without knowing the identity of the purchaser, you are
21 kind of stuck with the representations that Mallett gives you
22 as to what it sold the items for, aren't you?

23 A. Well, we were wanting to get from him some documentation,
24 if possible, on that.

25 Q. Did you?

GCK20LI1

Rusco - Cross

1 A. I don't recall.

2 Q. Now, drawing your attention to --

3 MR. DeVITA: Let me ask that we mark as Defendant's
4 Exhibit I a series of e-mails on June 26.

5 (Pause)

6 Q. I ask you to look first at the attachment, and that's a
7 letter from you addressed to Mr. Neville, correct?

8 A. Yes, that's correct.

9 Q. And dated June 26, and it says, "Thank you for your phone
10 call on Monday and the request to place four items from the
11 receivership estate of Olins/Argyle Capital Management Corp. in
12 The Masterpiece 2012 Art and Antiques Fair to be held in
13 London, June 28, 2012 through July 4, 2012, correct?

14 A. Correct.

15 (Continued on next page)

GCKJOLI2

Rusco - cross

1 Q. And the first item that is mentioned is the Swedish globes,
2 right?

3 A. That's correct.

4 Q. And the sale price to be -- that is reflected is \$250,000?

5 A. Right.

6 Q. And the commission rate, that's the rate of profit to
7 Mallett is scheduled is to be 20 percent?

8 A. Correct.

9 Q. And the next sentence after that lists, as we will require
10 that Mallett provide documentation disclosing names of
11 purchaser, the purchase price and commission amount deducted
12 from each item sold. So we know you didn't get the names of
13 the purchasers, right?

14 A. Right.

15 Q. And any representation you got about the purchase price was
16 what Mallett told you?

17 A. Right.

18 Q. And did there come a time that Mallett told you the globes
19 were sold?

20 A. Yes.

21 Q. Could you look at your log for July 5, 2012. -- I am sorry.

22 Before we go there, you had to apply to the court for
23 permission for him to sell these items, right?

24 A. That's correct.

25 Q. Because this is before the liquidation plan had been filed?

GCKJOLI2

Rusco - cross

1 A. Right.

2 Q. So that you informed him, your e-mail of June 26 says
3 perhaps I should have delayed my response to you by a few
4 minutes. We just received the court order approving your
5 request, correct?

6 A. Correct.

7 Q. And the request was based on his representation that he
8 would be selling the items for the prices listed in your
9 letter, right?

10 A. Correct.

11 Q. And then going to your log for July 5, 2012 confirming the
12 sale of the Swedish globes. Do you see that?

13 You have a telephone call from Henry Neville, he asked
14 about the Dragon candelabra and confirmed about the sale of the
15 Swedish globes. Do you see that?

16 A. Yes.

17 Q. And then over on July 12, there is an entry that says you
18 received \$209,968.00 net proceeds from the sale of the Swedish
19 globes?

20 A. Correct.

21 Q. That is net from their commission, which according to this,
22 is \$40,000?

23 A. Well, actually, it would have been -- the price would have
24 been a little bit more than that because they would have if
25 they collected 20 percent commission.

GCKJOLI2

Rusco - cross

1 Q. 20 percent commission?

2 A. Right.

3 Q. Let me show you -- I ask that we mark as Defendant's
4 Exhibit J -- this is a July 5, 2012 letter from Mr. Neville to
5 you, correct?

6 Do you see that?

7 A. Yes.

8 Q. It says in it that the sum owing to the bank will be
9 \$210,000 net of the 20 percent commission and that's
10 representing \$10,000.00 more than the agreed return that you
11 had discussed. Is that right?

12 A. Correct.

13 Q. So he negotiated with you for a lower return, and he said,
14 in other words -- well, let me put it this way:

15 You had agreed to a return of \$200,000, and he's
16 telling you in this letter that he got you even better, right?

17 A. Correct.

18 Q. So Mr. Neville never told you that he actually sold those
19 globes in April of 2012, correct?

20 A. No. I thought they were sold at the Masterpiece Fair?

21 Q. He didn't tell you they were actually sold at Maastricht?

22 A. No.

23 Q. You know what Maastricht is, right?

24 A. Yes.

25 Q. What is Maastricht?

GCKJOLI2

Rusco - cross

1 A. It is a European art and antique show, I think, I can't
2 recall which country it is in, but it is not in the U.K.

3 Q. He didn't tell you that he had sold, that Mallett had sold
4 those globes for 310,000 euros, did he?

5 A. No.

6 Q. (Pause) I am showing you what has been marked as Defense
7 Exhibit K. I wrote on there "Government Exhibit," and I
8 apologize for that.

9 THE COURT: Old habits die hard.

10 MR. DeVITA: It is 30 years ago, Judge, it should have
11 been long dead by now.

12 BY MR. DeVITA:

13 Q. But the invoice that is reflected on the second page of
14 that exhibit is the same or the same Swedish globes that we're
15 talking about?

16 A. I believe so.

17 Q. And it indicates a sale price of 310 euros -- 310,000
18 euros?

19 A. 310,000 euros, correct.

20 Q. And that would be, if you know -- you're a banker, maybe
21 you should know, roughly \$408,000?

22 A. At that time perhaps. I am not into foreign exchange that
23 much. Only when I need to be.

24 Q. But you know it is a lot more than the \$250,000 that the
25 court approved and that Mr. Neville told you they sold it for?

GCKJOLI2

Rusco - cross

1 A. Correct.

2 Q. And you never received any part of the difference, right?

3 A. No.

4 Q. "You" being the bank --

5 A. The bank, no.

6 THE COURT: Mr. Rusco, just wait till counsel finishes
7 the question. If you speak at the same time, it makes the
8 Court Reporter's job a little too difficult.

9 THE WITNESS: Sorry about that.

10 MR. DeVITA: I'll try to do the same, your Honor.

11 THE COURT: Thank you.

12 BY MR. DeVITA:

13 Q. So there is no question in your mind that Mr. Neville told
14 you he was taking the globes to the masterpiece festival or
15 whatever it is called?

16 A. Art show, I believe, yes, there is no question in my mind
17 that's where they were to be displayed.

18 Q. Now, I want to bring your attention back to the vases that
19 we talked about earlier, we talked about on direct examination.

20 Did you ever agree in March, in or about March of 2012
21 with Mr. Neville that he could sell those vases?

22 A. Well, they were in his possession. They were still under a
23 consignment agreement at the time. We didn't have anything,
24 you know --

25 Q. They were also -- sorry?

GCKJOLI2

Rusco - cross

1 A. There was no new agreement in place.

2 Q. Did you agree and authorize him to either buy or sell them
3 for \$520,000?

4 A. Once we got the court approval.

5 Q. That was when?

6 A. That was in June.

7 Q. So you didn't have that, a conversation of that type in
8 March?

9 A. (Pause)

10 Q. Take a look at your log. Specifically let's take a look at
11 March 28th, 2012. I think that would be on your first log.

12 A. The first log?

13 Q. Yes.

14 THE COURT: It says Government Exhibit 200.

15 MR. DeVITA: 200, yes, your Honor.

16 A. March 28th?

17 BY MR. DeVITA:

18 Q. March 28th, 2012, if you had a conversation on that date in
19 which you authorized Mr. Neville to sell those vases with a
20 return price of \$540,000, would you have recorded it in that
21 log for March 28th, 2012?

22 A. Yes, I would have.

23 Q. It is not there?

24 A. It is not there.

25 Q. Okay. This is at the time when the litigation over the

GCKJOLI2

Rusco - cross

1 receivership is taking place, isn't it?

2 A. Correct.

3 Q. Now, I ask you to take a look at your receiver log. This
4 is Government Exhibit 201. You have the entry of May 17, 2012
5 reflecting a conversation with Mr. Olins, right, may 17th?

6 A. I am trying to find it.

7 Q. This is now the receiver log, Government Exhibit 201.

8 A. Right. There is a telephone conversation with Robert
9 Olins.

10 Q. I am not sure you're looking at the same one.

11 A. I am.

12 Q. You have it in the book. Okay. Now --

13 A. Just to explain, my bifocals don't work so well with the
14 computer screen.

15 Q. That is fine. That is fine. You notice I am using the
16 paper, too. I'm an old fashioned fella.

17 So the conversation with Mr. Olins does not reflect
18 any conversation or discussion of the price for the sale, does
19 it?

20 A. No.

21 Q. I'd like you to look carefully in the period between May
22 17, 2012 and the time at which the vases were sold and see if
23 there are any further conversations between you and Mr. Olins
24 related to those vases?

25 THE COURT: Mr. Rusco, can you remind me when the

GCKJOLI2

Rusco - cross

1 vases were sold?

2 THE WITNESS: They were sold in June of 2012.

3 BY MR. DeVITA:

4 Q. I think there is an entry --

5 A. It is like June 15th or 12th, something in that range.

6 Q. There is an entry on June 15 that reflects a telephone call
7 from Henry Neville, and it says told about court order on the
8 garniture set, and follow-up says send a copy of the order and
9 wire transfer instructions. That is when you got the 15th is
10 when you received the court approval --

11 A. Right.

12 Q. -- for the sale. So let's take the period between June --
13 May 17 and June 15th. Are there any conversations between you
14 and Mr. Olins?

15 A. (Pause) None recorded in my log.

16 Q. If you had had them, they would be recorded, right?

17 A. Yes.

18 Q. But there are numerous conversations with Mr. Neville about
19 the vases, right?

20 A. Yes.

21 Q. And on, for example, on June -- May 18th, this is the day
22 after you spoke to Mr. Neville, to Mr. Olins, you got a call
23 from Mr. Neville and says we discussed the garniture set. He
24 has a "potential buyer." He thinks he would sell them for
25 \$600,000 with a net of 540. Do you see that?

GCKJOLI2

Rusco - cross

1 A. Yes, I do.

2 Q. Do you recall any conversation with Mr. Neville prior to
3 that date, at which you discussed with him and consented to a
4 net of \$540,000?

5 A. No.

6 Q. He certainly didn't tell you in that conversation that he'd
7 already sold the vases, did he?

8 A. As I said there, he told me he had a potential buyer.

9 Q. And then on May 18, you asked Mr. Olins for a letter to --

10 A. Not Mr. Olins.

11 Q. Mr. Neville. You didn't speak to Mr. Olins, right --

12 A. Right.

13 Q. -- in that period of time?

14 You asked Mr. Neville for a letter addressed to the
15 bank outlining the potential sale, correct?

16 A. That's correct.

17 Q. And the purpose for that letter was to submit to the court
18 to get approval?

19 A. That's correct.

20 Q. And you told Mr. Neville that?

21 A. Yes.

22 Q. So he knew that the representations that he was making were
23 going to be presented to the court?

24 A. Correct.

25 Q. I ask you to turn to your entry for May 24, 2012. Have you

GCKJOLI2

Rusco - cross

1 found it?

2 A. Yes.

3 Q. There is a conversation with Mr. Neville -- I am sorry.

4 The 3:00 pm conversation I am talking about. There are several
5 conversations with Mr. Neville.

6 It says we also discussed the garniture set. Mallett
7 London is trying to connect contact the potential buyer. He
8 explained that the potential transaction may involve the
9 exchange of pieces from the potential buyer, a common practice,
10 still willing to provide a letter regarding the garniture set
11 once -- wanted to clarify the transaction. Do you see that?

12 A. Correct.

13 Q. So clearly if he had already or Mallett had already sold
14 the vases, he was -- it was a misrepresentation to you that
15 London was trying to contact a potential buyer, right?

16 A. If that's the case, yes, you're correct.

17 Q. I ask you to look at the entry for June 7, 2012, 10:15 am,
18 there is a telephone call from Henry Neville.

19 Do you see that?

20 A. Yes.

21 Q. And he told you that there is a degree of urgency as the
22 client is planning to come to London. No dates at this point,
23 but Henry will advise as soon as he can. So he is representing
24 to you there is a potential buyer who is coming to London, so
25 you have to act fast. That is the reason for that

GCKJOLI2

Rusco - cross

1 representation, right?

2 A. Well, there was going to be some pressure, yes, to deal
3 with that buyer.

4 Q. And then at the end of the day you were told that the vases
5 were sold with a 20 percent commission and it meant a net to
6 you of -- actually, it wasn't \$210,000. He charged you for the
7 wire fee, right, that was deducted?

8 A. That was from the globes, the 210,000. You are talking
9 about the vases?

10 Q. Yes.

11 A. With the vases, I received 540,000.

12 Q. Going back to the globes, though, he, in fact, made you pay
13 the cost of the wire transfer, right?

14 A. Right.

15 Q. All right. Mr. Rusco, I'd like to talk to you about the
16 Dragon candelabra you were discussing on direct examination.

17 There was a proposed sale of those in June of 2012.
18 Isn't that right?

19 A. That's correct.

20 Q. If you look at your log, at Page 7, on June 29, 2012, do
21 you see that?

22 A. Yes, telephone call from Henry Neville, and there is a
23 client who'd asked to see the Dragon candelabra.

24 Q. Did you discuss pricing with Mr. Olins -- Mr. Neville at
25 that time?

GCKJOLI2

Rusco - cross

1 A. We discussed pricing with him after we talked to Robert
2 Olins about it as well as we spoke with Robert Olins about the
3 price.

4 Q. Ultimately, that proposed sale by Mallett didn't take
5 place?

6 A. It never materialized.

7 Q. There had been a number of discussions about these Dragon
8 candelabra throughout the time of the -- not just the
9 receivership, but even before. Isn't that right?

10 A. That's correct.

11 Q. They had been on consignment for a long time?

12 A. I believe since October of 2009.

13 Q. And they had not sold?

14 A. Not sold.

15 Q. There had a been number of inquiries, but they hadn't sold?

16 A. Right.

17 Q. It was your belief it was in the best interest of the bank
18 to get them sold, right?

19 A. Yes.

20 Q. So that when Mr. Jaeger came to you, you dealt directly
21 with Mr. Jaeger? You had conversations with Mr. Olins, but you
22 negotiated with Mr. Jaeger. Isn't that right?

23 A. That's correct.

24 Q. You knew Mr. Jaeger was planning to consign those dragons
25 to Mallett?

GCKJOLI2

Rusco - cross

1 A. Correct.

2 Q. In fact, you informed Mallett of that desire on his part,
3 didn't you?

4 A. Yes, I did.

5 Q. Did you have a conversation about what the consignment
6 price would be?

7 A. No.

8 Q. What was the consignment price that the bank had with
9 Neville -- with Mallett?

10 A. I'm thinking it was in the \$900,000 range.

11 Q. Did you have any reason to believe that Mr. Jaeger was
12 going to consign it for less?

13 A. Well, given how we hadn't had any sales of it and a lower
14 price, I assume he probably -- if he was trying to sell it
15 quickly, he might sell it for less, yes.

16 Q. But you didn't have a conversation with him about that?

17 A. No, I didn't talk with him about what he was planning on
18 consigning it for.

19 Q. Once you sold them to Mr. Neville, to Mr. Jaeger, the
20 bank's interest ended, right?

21 A. That's correct.

22 Q. The bank had no interest in those Dragon candelabra once
23 they were sold, right?

24 A. Correct.

25 Q. In fact, you had a bill of sale that was entered into,

GCKJOLI2

Rusco - cross

1 right?

2 A. That's correct.

3 (Off-the-record discussion)

4 MR. DeVITA: I seem to have made one too few copies of
5 this, your Honor -- no, no, I am sorry. Here it is. I didn't
6 want to leave the court without a copy.

7 BY MR. DeVITA:

8 Q. Is that your signature on that bill of sale, Mr. --

9 A. Yes, it is.

10 Q. -- mr. Rusco.

11 THE COURT: This is Defense Exhibit L?

12 MR. DeVITA: Yes, your Honor.

13 BY MR. DeVITA:

14 Q. Where it says witness, it says grantor, that's the bank,
15 right, for the sum of \$235,000 paid to it by grantee on the 6th
16 day of December, the receipt of which is hereby acknowledged,
17 has granted bargain quitclaim, sold, conveyed, assigned,
18 transfer, set-over and delivered by these presents and by these
19 presents does hereby grant, bargain, sell, convey, assign,
20 transfer, set-over and deliver unto grantee and to grantee's
21 successors and assigns forever all of the following described
22 property subject to grantor's control and possession as
23 receiver in the lawsuit.

24 Then it talks, describes the Dragon candelabra, right?

25 A. Correct.

GCKJOLI2

Rusco - cross

1 Q. As has been authorized and approved by the United States
2 District Court in that certain order entered on the docket
3 number, correct?

4 A. Correct.

5 Q. And then it says at the next to the last paragraph, it says
6 to have and to hold the Dragon candelabra hereby sold,
7 assigned, transferred and delivered unto the grantee, its
8 successors and assigns forever free and clear of any rights,
9 titles, interests or liens, right?

10 A. Correct.

11 Q. So that means that once he resold this, however long it
12 took, Mr. Jaeger was entitled to whatever money he received?

13 A. He was the owner of the Dragon candelabra.

14 Q. And he was entitled to do whatever he wanted with the
15 proceeds of that sale, right?

16 A. Correct.

17 Q. No question in your mind about that?

18 A. No.

19 Q. You had given to him the risk that you had, as part of this
20 transaction, given to Mr. Jaeger whatever risk there was on the
21 resale?

22 A. Yes.

23 Q. And whatever ability to profit there was on the resale?

24 A. Correct.

25 Q. And to divide the profit however he so chose?

GCKJOLI2

Rusco - redirect

1 A. Yes.

2 MR. DeVITA: Your Honor, I have no further questions.
3 May I have just one moment to make sure I'm right on that?

4 THE COURT: Yes.

5 (Off-the-record discussion)

6 MR. DeVITA: No further questions.

7 THE COURT: All right. Redirect.

8 MS. MAGDO: Just very briefly, your Honor.

9 REDIRECT EXAMINATION

10 BY MS. MAGDO:

11 Q. Mr. Rusco, you testified earlier that there was a minimum
12 price of \$200,000 for the sale from the receiver to a third
13 party of the Dragon candelabra. Is that correct?

14 A. Yes, that's correct.

15 Q. And that for any amount of \$200,000 or above, you did not
16 need to seek court approval because it was part of the
17 liquidation plan, correct?

18 A. That's correct.

19 Q. Did you at any time assign a value of \$432,000 to the
20 Dragon candelabra as the minimum amount that the receiver
21 needed to get on a for sale?

22 A. Yes, we did.

23 Q. What was the context of that?

24 A. That was the context of the item being shown to the
25 prospective buyer that Mallett had.

GCKJOLI2

Rusco - recross

1 Q. That was in mid-2012?

2 A. Mid-2012, July, August time-frame.

3 Q. That sale didn't end up going through, correct?

4 A. That's correct.

5 Q. Did you tell Mr. Olins that if a sale was consummated for
6 less than \$432,000, he would owe a deficit to the bank of
7 whatever the number was below \$432,000?

8 A. No.

9 Q. So he didn't have an additional amount that he needed to
10 make up to the bank if it was sold for less than \$432,000?

11 A. Right.

12 Q. So he did not have such a debt? So if he told anyone that
13 he had such a debt to the bank, that would be incorrect?

14 A. Yes, that would be incorrect.

15 MS. MAGDO: Nothing further.

16 RECROSS EXAMINATION

17 BY MR. DeVITA:

18 Q. Let me explore that a little further if I can, Mr. Rusco.

19 If the item sold with a net to the bank of \$432,000,
20 that would have reduced Mr. Olins' debt by \$432,000, right?

21 A. Correct.

22 Q. When it sold for \$235,000, there was a gap between what the
23 reduction of his debt was, right?

24 A. Correct.

25 Q. So Mr. Olins -- and if that gap is \$197,000, right?

GCKJOLI2

Rusco - redirect

1 A. Yes.

2 Q. Right?

3 A. Yes.

4 Q. So as a result of the Dragon candelabra selling for
5 \$235,000 instead of \$432,000, Mr. Olins was still on the hook
6 to the bank for 197 more, 197 more thousand more than he would
7 have been had the Dragon candelabra sold in June for \$432,000?

8 A. That's correct.

9 MR. DeVITA: Okay.

10 REDIRECT EXAMINATION

11 BY MS. MAGDO:

12 Q. One quick follow-up.

13 At that time the amount of the collateral, the value
14 of the collateral exceeded the debt to AB&T. Is that correct?

15 A. Yes, that's correct.

16 MS. MAGDO: Nothing further.

17 THE COURT: You may step down, Mr. Rusco.

18 (Witness excused).

19 THE COURT: Ms. Magdo, next witness.

20 MS. MAGDO: The government calls Bruce Jaeger. Do you
21 want to retrieve the exhibits from the witness stand?

22 MR. DeVITA: Maybe we can take a minute to clean up,
23 your Honor, because I have exhibits up there, too.

24 THE COURT: Sure.

25 (Pause)

GCKJOLI2

Jaeger - direct

1 MS. MAGDO: The government calls Bruce Jaeger.

2 BRUCE W. JAEGER,

3 called as a witness by the Government,

4 having been duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MS. MAGDO:

7 Q. Mr. Jaeger, what do you do professionally?

8 A. I am in investment banking.

9 Q. How long have you known Robert Olins?

10 A. Since the mid-'90s.

11 Q. Mr. Jaeger, if I could ask you to approach the microphone
12 and speak into the microphone so everyone can hear you. Thank
13 you.

14 Describe the nature of your 20 year or so relationship
15 with Mr. Olins.

16 A. I first met Mr. Olins when he was -- had trading authority
17 on behalf of a client at Bear Stearns, Isadore Becker. He had
18 approached the desk for some trades on behalf of Mr. Becker,
19 and that is how I got to know Mr. Olins.

20 Q. Are you aware Mr. Olins collected artworks and antiques?

21 A. Yes, I am.

22 Q. We'll refer generally to his collection of arts and
23 antiques as the art and antique collection, okay?

24 A. All right.

25 Q. Did there come a time you became interested in purchasing

GCKJOLI2

Jaeger - direct

1 an item from the art and antique collection?

2 A. Yes, I did.

3 Q. Approximately when was that?

4 A. In the fall of 2012, I believe.

5 Q. How did that come up.

6 A. Mr. Olins and I had discussed that the SEC had imposed a
7 fine, I think about \$3 million, plus he had defaulted on a
8 loan, and they were in the process of liquidating his assets to
9 satisfy those obligations.

10 Q. Did he approach you about the purchase or did you approach
11 him?

12 A. He approached me.

13 Q. Did he give a reason for approaching you about this?

14 A. Yeah, he thought it was a way I could help him pay down his
15 debt and a way I could buy some assets at a reasonable
16 valuation.

17 Q. Were you looking to buy an item as an investment or as
18 something to keep and display?

19 A. Trade, for the investment.

20 Q. Did you and Mr. Olins discuss a specific piece?

21 A. Yes, we discussed the Dragon candelabra.

22 Q. Did there eventually come a time you made an offer to buy
23 the Dragon candelabra from the receiver?

24 A. After doing a bunch of due diligence, yes.

25 Q. Approximately when did you make your offer to buy the

GCKJOLI2

Jaeger - direct

1 Dragon candelabra?

2 A. In December, beginning of December, I believe it was.

3 Q. 2012?

4 A. Yes.

5 Q. Now I'd like to focus your attention specifically on the
6 time-frame prior to your making an offer to the receiver, okay?

7 A. Yes.

8 Q. Did you have any discussions with Mr. Olins about the
9 potential resale value of the Dragon candelabra?

10 A. Yes, I did.

11 Q. Tell me about those conversations.

12 A. The conversations were that there were three potential
13 buyers out in the market, and one one was in Latin America, one
14 was in Asia, another in the south of France, a German client.

15 Those three potential clients were out there and
16 Mr. Olins felt that if I purchased it as a reasonable
17 valuation, that I could sell it at a nice profit over time.

18 Q. Did you discuss what price Mr. Olins thought you might be
19 able to resell it for over time?

20 A. I think it was a combination of Mr. Olins and Mr. Neville,
21 but, yes, the answer is yes.

22 Q. What was that price?

23 A. \$950,000.

24 Q. Would that have been the net?

25 A. Yes.

GCKJOLI2

Jaeger - direct

1 Q. To you?

2 A. Yes, that would have been the net to me.

3 Q. After any commissions to --

4 A. That's correct. As I understood, it was 1.2 million was
5 the gross price, if you will, net of a commission to Mallett,
6 and net to me would be 950.

7 Q. Again focusing your attention ton the time period prior to
8 your making an offer to the receiver, did you have any
9 discussions with Mr. Olins about the price point at which you
10 should make an offer to the receiver?

11 A. Yes.

12 Q. What were those conversations?

13 A. The conversations were in the context of looking at the
14 Christie's estimates and discussing it, looking at the
15 insurance, looking at where Mr. Olins had purchased it prior
16 and, you know, what exactly the range was within the Christie's
17 estimates.

18 Q. Did a specific number -- did you discuss a specific number
19 with Mr. Olins?

20 A. I would say we came up something in the low 2's, yes.

21 Q. And by "low 2's," you mean at or above -- slightly above
22 \$200,000, right?

23 A. That's correct, yes, that's correct.

24 Q. Did Mr. Olins advise you to make a bid in that range?

25 A. Yes, he guided me, yes, accordingly.

GCKJOLI2

Jaeger - direct

1 Q. Again still talking about the period prior to your offer to
2 the receiver while the Dragon candelabra was still owned by the
3 receiver, okay, did you have any conversations with Mr. Olins
4 regarding the division of the proceeds of an eventual resale?

5 A. Yes.

6 Q. Tell me about those conversations.

7 A. Mr. Olins said to me that there's a value that's been
8 assigned to this Dragon candelabra by the receiver, and that
9 valuation was assigned at the \$432,000 number, and that would
10 be a deficiency if I were able to buy it at anything less than
11 that.

12 So in the case where I did purchase it at \$235,000,
13 and the valuation in terms of the collateral was carried at
14 432, Mr. Olins would have a deficiency of 197, which is the
15 difference between the collateral value were to purchase it and
16 where -- and he felt if I was consigning 950, at two and a half
17 times my money, then it wouldn't be fair for him to have to
18 make up a deficiency based on that transaction.

19 Q. So when you said you would help him make up a deficiency,
20 what do you mean?

21 A. I said if I were to buy it at 235 and eventually sell it at
22 950, that he could receive from Mallett the deficiency, the
23 collateral, deficiency of 197, which in my mind was due back to
24 the bank.

25 Q. What was your understanding of what Mr. Olins would do with

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Jaeger - direct

1 any such proceeds?

2 A. He would remit it back to the bank. That was the whole
3 premise of the deficiency.

4 Q. What was your first offer or what was your initial offer?

5 A. My initial offer was 225.

6 Q. \$225,000?

7 A. To Mr. Rusco, that's correct.

8 Q. The final purchase price was?

9 A. He rejected that, and I came back at 235.

10 Q. Okay. Again prior to the time of your making an offer, did
11 you make any notes about this potential transaction?

12 A. Yes, I did.

13 Q. What was the purpose of your making notes --

14 A. So I could look and see, based on the profitability, if it
15 was worth doing the transaction.

16 Q. All right. Please take a look at Government Exhibit 303.
17 You can look at it either on the screen where it should appear
18 momentarily or in your binder, whichever is easier for you.

19 THE COURT: Mr. Jaeger, make sure before you speak,
20 you let counsel finish her question just so that you're not
21 talking at the same time, please.

22 THE WITNESS: Yes, your Honor.

23 BY MS. MAGDO:

24 Q. Do you recognize Government Exhibit 303?

25 A. Yes.

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Jaeger - direct

1 Q. What is it?

2 A. Those are my handwritten notes.

3 Q. Starting at the top of the page where it says T No. 1, what
4 is T No. 1?

5 A. Transaction No. 1 candelabra.

6 Q. Can you tell us what the first line under candelabra reads.

7 A. Yes. "RAO, which is Robert Olins, paid 660,000 and it says
8 to be verified/bank/insurance.

9 Q. Were you including that as just a data --

10 A. A data point, right.

11 Q. Moving on to the second line, what does that say?

12 A. Mallett selling price of \$1.2 million.

13 Q. You testified earlier that that was the number that both
14 Mr. Olins and Mr. Neville said you could hope to achieve in the
15 long run?

16 A. That's correct.

17 Q. The next line, please.

18 A. Mallett commission. I was told about 20 percent was the
19 right number to estimate.

20 Q. And is that about \$250,000?

21 A. That's correct.

22 Q. The net proceeds, what does that mean, 950,000?

23 A. That is deducting the Mallett commission from the Mallett
24 selling price, leaving with net proceeds.

25 Q. The next line.

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Jaeger - direct

1 A. The next line is Robert A. Olins, collateral net of
2 \$182,000.

3 Q. Can you explain that, please.

4 A. Sure. As I mentioned before, Robert had, Mr. Olins had
5 explained to me that the candelabra had a collateral value at
6 the bank of \$432,000, and any purchase price below that would
7 be a deficiency.

8 That deficiency would need to be made up to the bank,
9 so anything, if you add that 182 to whatever I estimated my
10 purchase price, that should add up to the 432. If you wanted
11 to go down --

12 Q. What did you estimate your purchase price would be?

13 A. Yeah, it says a couple of lines down.

14 Q. So tell -- walk --

15 A. I estimated the cost to the bank which has a question mark
16 as 250, \$250,000, which is also the most I would be willing to
17 pay.

18 Q. Why is there a question mark there?

19 A. Because I had no idea what the bank would accept.

20 Q. Is that because you had not even made an offer yet?

21 A. Yes.

22 Q. Are you arriving at the \$182,000 by subtracting 250 from
23 432?

24 A. That's correct.

25 Q. Again Mr. Olins told you that 432 was the value the bank

GCKJOLI2

Jaeger - direct

1 had assigned?

2 A. That's correct.

3 Q. And he would be on the hook for any difference?

4 A. That's correct.

5 Q. Again what did you understand would happen to the -- what
6 you estimate to be \$182,000?

7 MR. DeVITA: Objection to what he understood, if there
8 is a conversation.

9 THE COURT: I think we have covered it. Go ahead.

10 BY MS. MAGDO:

11 Q. What did Mr. Olins tell you would happen to the estimated
12 \$182,000?

13 A. I believe that that was going back to the bank to cover his
14 deficiency.

15 MR. DeVITA: Objection to what he believes, your
16 Honor.

17 THE COURT: Again I think we have covered it. Why
18 don't you ask your next question.

19 BY MS. MAGDO:

20 Q. Did you intend the approximately \$182,000 payment to
21 Mr. Olins to be in any sense a commission to him for helping to
22 resell the Dragon candelabra?

23 A. No.

24 Q. Who was going to actually give the money? Who did you
25 intend to have give the money to Mr. Olins?

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Jaeger - direct

1 A. I asked Mr. Olins to work it out with Mr. Neville.

2 Q. Did you discuss with Mr. Olins what would happen if you
3 were to accept an offer at less than the \$950,000 net proceeds
4 price?

5 A. No.

6 Q. So --

7 THE COURT: Can I just clarify. If I can call it a
8 deal, to the extent that the understanding or your
9 understanding or intent was to provide the delta, the
10 difference between the 432,000 and whatever price you
11 ultimately paid for the item, was that conditional upon your
12 getting \$950,000?

13 Was it explicit between you and Mr. Olins that that
14 would only occur if you got \$950,000?

15 THE WITNESS: Yes.

16 THE COURT: Okay.

17 BY MS. MAGDO:

18 Q. So there doesn't appear to be a date on these notes,
19 correct?

20 A. Correct.

21 Q. Are you able to place the timing of when you made these
22 notes as before or after you purchased the Dragon candelabra?

23 A. Definitely before.

24 Q. How do you know that?

25 A. Because the numbers, both the RAO collateral number and the

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Jaeger - direct

1 cost to the bank are just estimates because if this was done
2 after that RAO collateral, it would have been 197, and the cost
3 to the bank would have been 235.

4 Q. So just at the bottom line, 9 months put back at 500,000,
5 what does that refer to?

6 A. I was trying to hedge my bet. If I wasn't able to sell it
7 in 9 months, I could try to put it back to Mallett.

8 Q. Did that eventually end up being part of the deal?

9 A. No.

10 Q. Is that another way to know before you purchased it?

11 A. Yes.

12 THE COURT: Mr. Jaeger, just a reminder, even if you
13 know what the question is likely to be, and you can see it
14 coming, just wait for Ms. Magdo to finish before you answer.

15 BY MS. MAGDO:

16 Q. So when did you close on the purchase of the Dragon
17 candelabra?

18 A. I believe it was in December 6th in 2012.

19 Q. What happened to the, physically what happened to the
20 Dragon candelabra after you purchased them?

21 A. The Dragon candelabra were housed in, as I understood it,
22 in London, in Mallett's office in London, and it was being
23 shown around in various galleries throughout Europe on displays
24 to market the piece. This is what I was told by Neville.

25 Q. Did you enter into a consignment agreement shortly after

GCKJOLI2

Jaeger - direct

1 you purchased them?

2 A. I did. I think five days after I purchased the piece, I
3 entered into a six-month consignment agreement for 950 with
4 Mallett.

5 Q. During the period of the consignment with Mallett, did you
6 have any conversations with Mr. Neville about how his efforts
7 to sell the piece were going?

8 A. Yes.

9 Q. In those discussions, did you discuss those three potential
10 purchasers that Mr. Olins had mentioned to you with
11 Mr. Neville?

12 A. Yes.

13 Q. What did Mr. Neville tell you about those purchasers?

14 A. One of the three, I can't recall which one it was, whether
15 it was the Latin American or the Asian buyer pretty quickly
16 stepped out of the picture, so there were only two potential
17 buyers left, which made me somewhat nervous, but we decided to
18 just go ahead and continue to market the candelabra.

19 Q. Did Mr. Neville take the Dragon candelabra anywhere to show
20 them to anyone?

21 A. Yes, he did.

22 Q. Where was that?

23 A. In Maastricht, a big show, I don't know exactly where it is
24 in Europe, but it is -- I don't know if it is in France or
25 where it is.

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Jaeger - direct

1 THE COURT: I am going to take judicial notice
2 Maastricht is in the Netherlands. Go ahead.

3 BY MS. MAGDO:

4 Q. Did he take them to France, as far as you know?

5 A. I believe he did.

6 Q. What was the purpose of that?

7 A. As I understood it, he was bringing it down to the chateau
8 of the potential German buyer to put it on his mantle-place to
9 show them how it would look on their mantle-place.

10 Q. To the best of your knowledge, during the consignment
11 period was Mr. Olins making any efforts or any trips or any
12 efforts to sell the Dragon candelabra?

13 A. Not that I was aware of, no.

14 Q. During the period that you had the Dragon candelabra
15 consigned to Mallett which started in November -- sorry --
16 December 2012 -- correct -- did you ever tell Mr. Olins that
17 you would give him a sales commission if he helped to get the
18 Dragon candelabra sold?

19 A. I don't believe I ever said that, no.

20 THE COURT: I am sorry. Can you say that again?

21 THE WITNESS: I don't believe I ever said that.

22 BY MS. MAGDO:

23 Q. Again any money that you had agreed to give him was to pay
24 back to the bank, correct?

25 A. Right.

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Jaeger - direct

1 Q. It was not for him to keep as a sales commission, though?

2 A. (Pause)

3 Q. At any time did you receive an offer to purchase the Dragon
4 candelabra?

5 A. Yes.

6 Q. Who informed you of that offer?

7 A. I was in California, and I got a call on my cell phone from
8 Mr. Olins.

9 Q. What did Mr. Olins tell you?

10 A. Mr. Olins said that there was a buyer, I think it was the
11 German buyer, for 603 net, and that I had it for a long time, I
12 should really consider selling it.

13 Q. What was your initial response to that offer?

14 A. I was rushing out and it was so far below the 950, I said
15 absolutely not, and hung up and went on my way.

16 Q. As far as you know, was the potential buyer the same
17 person, the same German client I think you called him, that who
18 dad expressed interest even before November 2012?

19 A. Yes.

20 Q. After you rejected the initial offer of \$603,000 net to
21 you, what happened next?

22 A. Mr. Olins called me a few hours later and said he was able
23 to speak I believe with Mr. Neville, and they were willing to
24 throw in a \$50,000 store credit. Again I was running out. I
25 said okay, and that was the extent of our conversation.

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Jaeger - direct

1 Q. Did Mr. Olins have an opinion on whether you should accept
2 the offer?

3 A. Yes.

4 Q. What was his opinion?

5 A. That I should take it since I had been holding the
6 candelabra for 11 months.

7 Q. That day when you were in California and speaking to
8 Mr. Olins by phone, did you discuss whether he would receive a
9 share of the proceeds?

10 A. I don't recall ever saying that, no.

11 Q. Had you discussed with Mr. Olins what would happen if you
12 accepted a price of less than 950,000?

13 A. Yeah. The fact that I was receiving so much less than I
14 originally anticipated, I would have absolutely prorated any
15 number that he thought he would be entitled to.

16 Q. Your understanding of the 603 offer, did you believe that
17 Olins was getting a portion of those proceeds?

18 A. You know, I didn't know what to believe. To be honest with
19 you, there was a decorator involved on the buying side, there
20 was barter being taken back per Neville, and so there were a
21 lot of moving parts, so I didn't know who was getting what. It
22 was hard for me to assess who, in fact, was getting something,
23 if anybody was.

24 Q. Did Mr. Olins tell you that he was taking a portion of the
25 sale proceeds?

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Jaeger - direct

1 A. I don't recall him ever saying that, no.

2 Q. Did you get an invoice from Mallett regarding that
3 transaction?

4 A. Yeah, when I arrived back in New York a couple of days
5 later, I did receive an invoice for \$800,000 from Mallett.

6 Q. What did you do after you received that invoice?

7 A. I got right on the phone with Mr. Olins and said:

8 A. I have a tax problem here; and

9 B. Someone is lying to me about what it was sold for.

10 Q. What did Mr. Olins say?

11 A. Mr. Olins said take it up with Henry, which I wound up
12 doing.

13 Q. Tell me about that.

14 A. I called Henry's office, and Henry was traveling, and I
15 spoke to a woman, I think her name was Anna Gutierrez, and she
16 said she would get in touch with Mr. Neville and get back to
17 me.

18 The next day I got an e-mail from Mallett saying that
19 the invoice was sent in error, they made a mistake, discard,
20 and they're going to re-send the invoice of 603 including the
21 \$50,000 store credit.

22 Q. Did you have any further conversations about this
23 transaction with Mr. Olins?

24 A. Yeah. I then after the dust settled, I did call him back
25 and said I feel like someone was lying to me because it seems

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Jaeger - direct

1 like someone got paid \$800,000, whether it be Mr. Olins,
2 Mr. Neville or the decorator, and Mr. Olins told me under no
3 uncertain terms that that was not the case.

4 Q. Did he specifically say that he did not get any money from
5 the transaction?

6 A. Yes.

7 Q. What was the tenor of that conversation?

8 A. The length or the tone?

9 Q. The tone?

10 A. The tone was hostile.

11 Q. Did you continue to follow up on what you suspected was a
12 discrepancy?

13 A. A couple of weeks later I went with a family member to
14 visit Mallett to cash-in, for lack of a better word, my store
15 credit, and I confronted Mr. Neville and basically asked
16 Mr. Neville -- I told Mr. Neville that I thought somebody had
17 made money, I thought he had made money or the decorator,
18 somebody had made money and someone was lying to me, and he got
19 very agitated and said that no one -- he didn't make money and
20 his firm didn't make money and all this was was a relationship
21 trade from Mallett's perspective.

22 Q. Did he mention that he took back certain items in
23 connection with the transaction?

24 A. He did, he said it was a relationship trade. I don't
25 remember the kind of furniture, it be armchairs or some kind of

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Jaeger - direct

1 furniture, I recall.

2 Q. Did you follow up with Mr. Olins to try to get to the
3 bottom of what happened?

4 A. Not really. At that point I had a loan maturing a month a
5 way. I was out an illiquid piece of art. I realized no matter
6 how much digging I was going to do, it would just not prove
7 fruitful, so I was done.

8 Q. You mentioned a loan. What loan is that?

9 A. Back in December I issued a loan to --

10 Q. Sorry? December of 2012?

11 A. I had issued a one-year loan for \$340,000 to Spirit Bear.

12 Q. What is Spirit Bear?

13 A. Spirit Bear is an investment entity in which Mr. Olins
14 consults for and Jay Palmer, the president.

15 Q. And how did the idea of your making a loan to Spirit Bear
16 originate?

17 A. I was approached originally to look at a company called
18 HPEV, and Mr. Olins actually brought in the management team so
19 a bunch of potential investors could hear their story.

20 After I heard their story, I was not impressed with
21 the management team, but I did like the technology, so I said I
22 was out in terms of making an equity investment.

23 Subsequently, Mr. Olins came back to me and said would
24 you make a loan to Spirit Bear since Spirit Bear had already
25 invested or committed to investing a half a million dollars

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Jaeger - direct

1 into the company of which they put in 180,000. So I said I'd
2 listen.

3 Q. What was the loan? What did Mr. Olins tell you the loan
4 would be used for?

5 A. To invest in the technology and into the infrastructure of
6 HPEV Company.

7 Q. What was the initial amount of the loan Mr. Olins asked you
8 to make to Spirit Bear?

9 A. I think it was 350 was the initial amount. It wound up
10 being 340.

11 Q. Did you make any notes regarding the potential loan?

12 A. Yeah, on Transaction No. 2 is the highlight summary of the
13 loan I was considering.

14 Q. Just to be clear, this is Government Exhibit 303, about
15 halfway down where it says T No. 2. Are those your notes about
16 the loan efforts?

17 A. Yes, they are.

18 Q. When in relation to making the loan did you make these
19 notes, before or after?

20 A. Oh, definitely before.

21 Q. How do you know that?

22 A. Well, there are inconsistencies. These again are
23 estimates. The \$350,000 was in there wound up being 340,000.
24 The 12 percent quarterly interest payments was correct. The
25 UCC filing was correct, but the whole premise on No. 3 about

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Jaeger - direct

1 the shares is not correct.

2 What I agreed to take in consideration for making the
3 loan was a 12 percent interest rate plus preferred shares. In
4 this case, there were preferred shares of 15 preferred shares,
5 which translates here into 350,000 shares of common stock.

6 What I actually wound up taking was 25 preferred
7 shares, which translates into 500,000 shares of common stock.

8 Q. Did there come a time you actually entered into this loan
9 agreement?

10 A. Sorry. Can you repeat that?

11 Q. Did there come a time you entered into this loan agreement?

12 A. Yes.

13 Q. Directing your attention to Government Exhibit 302, was
14 this pledge and security agreement part of the agreement that
15 you had with Spirit Bear?

16 A. It looks as it, yes.

17 Q. This was entered into on December 13, 2012, correct?

18 A. That's correct.

19 Q. The notes at Government Exhibit 303, were those made before
20 or after December 13, 2012?

21 A. Before.

22 Q. So you mentioned that the collateral pool changed. What
23 ended up being the collateral pool for --

24 A. Sure. Well, originally Mr. Olins provided me with a
25 document that showed a \$695,000 value on the wall brackets

GCKJOLI2

Jaeger - direct

1 which he was going to post as collateral for my loan, so I
2 would get the 12 percent interest rate, I would get the shares
3 and the collateral, if you will, instead of the oil interests
4 was the wall brackets.

5 Q. Just to be clear and make sure I understand, when you were
6 initially negotiating this loan with Mr. Olins, he offered some
7 wall brackets as collateral for the loan. Is that correct?

8 A. That's correct.

9 Q. And what did he tell you the value of the wall brackets
10 was?

11 A. I had the invoice, and the invoice showed me the wall
12 brackets were worth \$695,000.

13 Q. So did you ask him to put in writing that Spirit Bear
14 owned -- this was an asset belonging to Spirit Bear?

15 A. Yes. I eventually did ask that of him and his associate,
16 Jay Palmer, and I got what I termed a net asset letter which
17 shows me the assets between the combined entities.

18 Q. Looking at Government Exhibit 300, is that the letter that
19 you received in response to your request?

20 A. Yes.

21 Q. Taking a look at -- let's read the letter.

22 Dear Bruce: This letter shall serve to confirm that
23 Spirit Bear Limited's assets include -- and let's skip to Point
24 No. 2 -- is this a description, more formal description of the
25 wall brackets that Mr. Olins had told you about earlier?

GCKJOLI2

Jaeger - direct

1 A. Yes.

2 Q. Based on this letter, did you understand that the wall
3 brackets were owned by Spirit Bear, Limited?

4 A. It is on Spirit Bear letterhead, yes.

5 Q. Did you have any reason to think they were not owned free
6 and clear?

7 A. No.

8 Q. Did you have any reason to think or did Mr. Olins tell you
9 they were encumbered in any way?

10 A. No.

11 Q. After you received the letter, did Mr. Olins confirm to you
12 that it was Spirit Bear, the U.S. entity that owned the
13 brackets?

14 A. Well, I went back to Jay Palmer first and asked him who, in
15 fact, owned these assets because I wasn't sure if it was the
16 Isle of Man or the U.S.

17 Q. What did Mr. Olins tell you?

18 A. Again, I don't know if it was Mr. Olins or Mr. Palmer, but
19 I found out that the interest in the oil wells was owned by
20 Spirit Bear Isle of Man and that the wall brackets were owned
21 by Spirit Bear U.S.

22 Q. Originally you said the wall brackets were pledged as
23 collateral for the loan?

24 A. They were intended to, yes.

25 Q. Did that change at some point?

GCKJOLI2

Jaeger - direct

1 A. Yes. When I notified Mr. Olins that we were going to do a
2 UCC filing or lien against the collateral, then the next day I
3 got a call saying why don't you take the oil interest instead
4 of the brackets.

5 Q. You mentioned a UCC filing. What does that involve?

6 A. It is a mortgage or a lien you have to go in and you have
7 to figure out who, in fact, owns the asset being pledged.

8 Q. Did it involve certain due diligence?

9 A. Of course.

10 Q. Would such due diligence, would you expect it would
11 disclose any prior liens on the collateral?

12 A. Yes.

13 Q. When Mr. Olins proposed that you not take the wall brackets
14 as collateral, did he give you any explanation for why?

15 A. He just said he thought that the oil brackets -- oil wells
16 were better and they were cash-flowing assets, no real
17 explanation.

18 Q. When a negative pledge is put on an item, is a UCC filing
19 done as well?

20 A. Not necessarily, no.

21 Q. So you mentioned you saw an invoice for the wall brackets.
22 Let's take a look at Government Exhibit 101. Is that the
23 invoice that you saw?

24 A. Yes.

25 Q. Based on this invoice, did you believe that they were owned

GCKJOLI2

Jaeger - direct

1 free and clear?

2 A. Yes.

3 Q. Did you notice that the invoice was issued to Mr. Olins?

4 A. Yes.

5 Q. Did you ask any questions about that?

6 A. I don't recall if I asked any questions. I just assumed
7 that it was transferred over to Spirit Bear, considering that
8 this didn't show up in his schedule of assets owned
9 individually.

10 Q. Did you rely on that letter that we just looked at in
11 understanding these belonged to Spirit Bear?

12 A. I relied on the net asset letter that was provided to me to
13 make the loan.

14 Q. In deciding whether to make the loan to Spirit Bear, did
15 you rely upon the representation that Spirit Bear owned the
16 wall brackets?

17 A. Yes.

18 Q. Based on the total collateral pool, including the negative
19 pledge on the wall brackets, did you decide to enter into a
20 loan agreement?

21 A. Yes.

22 Q. So let's look at Government Exhibit 302. In the second
23 paragraph, what is the amount of the loan, the principal amount
24 of the loan?

25 A. \$340,000.

GCKJOLI2

Jaeger - direct

1 Q. Is that different from the notes that you had made earlier?

2 A. Yes.

3 Q. Why is that?

4 A. I don't recall. It was an estimated of 350, and maybe they
5 didn't use much for legal fees. I don't recall the reason it
6 was different.

7 Q. At some point it changed?

8 A. It did.

9 Q. Let's take a look at Exhibit D to this agreement which is
10 on Page 19 of this document. Under the "material assets," do
11 you see the wall brackets listed?

12 A. Yes.

13 Q. That's again because there was a negative pledge on those?

14 A. That's correct.

15 Q. Did there come a time that forbearance of the loan was
16 requested?

17 A. Yes, about two -- sorry.

18 Q. Who requested the forbearance?

19 A. Mr. Olins requested it. He called me two days before the
20 loan was due and told me they didn't have sufficient funds and
21 would I grant them forbearance.

22 Q. Did you agree to a forbearance?

23 A. Initially, no, but when I spoke to Mr. Olins numerous
24 times, I then granted forbearance.

25 Q. At the end of the forbearance period, did Spirit Bear

GCKJOLI2

Jaeger - direct

1 ultimately default on the loan?

2 A. Yes.

3 Q. At that time did you try to enforce the negative pledge on
4 the wall brackets?

5 A. First we foreclosed on the collateral and then we then sent
6 letters out to Mallett and to the public company that on the
7 HPEV shares notifying that these assets are subject to our
8 pledge agreement and to reinforce those assets, so the answer
9 is yes.

10 Q. With respect to the wall brackets, why did you send a
11 letter to Mallett?

12 A. Because that's where they were being housed. I didn't want
13 them to disappear or go overseas.

14 Q. Did you receive a response from Mallett?

15 A. Yes, we did.

16 Q. Was it from Mallett or their counsel, if you recall?

17 A. Mallett's counsel.

18 Q. Let's take a look at Government Exhibit 301. Is this the
19 letter that you received from Mallett's counsel in response to
20 your attempt to enforce the negative pledge?

21 A. Yes.

22 Q. Upon reading this letter, how would you describe your
23 reaction?

24 A. Surprised.

25 Q. What was the reason for your surprise generally?

GCKJOLI2

Jaeger - direct

1 A. I mean the first bullet, when -- actually, the first and
2 second bullet, when they talk about a private client, we knew
3 who the private client was because we had cross-referenced the
4 invoice numbers and who exactly who the private client was. In
5 the first bullet point it looks like Mr. Olins had agreed to
6 purchase the wall brackets for 695,000.

7 MR. DeVITA: Your Honor, at this point I will object
8 because he is now interpreting someone's hearsay letter.

9 THE COURT: I'll allow him to testify as to his
10 understanding in reaction to the letter, but take it with a
11 grain of salt given he didn't write the letter. Go ahead.

12 BY MS. MAGDO:

13 Q. So the first bullet point, was that different from what you
14 had previously understood?

15 A. Yes.

16 Q. How so?

17 A. How so? I received a net asset letter from the company
18 Spirit Bear that said that they owned outright the brackets.

19 Q. Looking down the letter, was there anything else that was
20 different from what you had previously understood?

21 A. Well, on November 19th, 2013, it seems that a \$197,000
22 credit was issued to the same or the account of the private
23 client, which we know is Neville -- sorry -- which we know is
24 Olins, which is the same day I sold the candelabra.

25 Q. What else is different from what you had previously

GCKJOLI2

Jaeger - direct

1 understood?

2 A. That all of a sudden the private client who owned the
3 brackets transferred those to Spirit Bear and thereby violated
4 my loan again by incurring debt.

5 Q. So you had previously understood that Spirit Bear owned the
6 wall brackets, correct?

7 A. That's correct.

8 Q. After reading this letter, who did you believe owned the
9 wall brackets?

10 A. After reading the letter, it sounded to me like Mallett
11 owns the brackets, and neither Olins or Spirit Bear ever owned
12 the brackets.

13 Q. So was the negative pledge that was made on the wall
14 brackets, was that a valid consideration?

15 A. For me making the loan?

16 Q. Did you rely on that in making the loan?

17 A. Yes, yes, of course.

18 Q. Who had made the representation about the wall brackets
19 upon which you relied?

20 A. Spirit Bear in their letter, their net asset letter.

21 Q. Did Mr. Olins make any representations about the wall
22 brackets?

23 A. Initially when he offered it to me, yes.

24 Q. Did you rely on those representations?

25 A. Yes.

GCKJOLI2

Jaeger - direct

1 Q. If you had known that there was a \$400,000 encumbrance or
2 amount owing on the wall brackets, would you have changed your
3 decision to accept the wall brackets as part of the collateral
4 pool?

5 A. Yes.

6 Q. Did you pursue any legal remedy with respect to the
7 defaulted loan?

8 A. Yes.

9 Q. What amount of damages did you seek?

10 A. The loan and the legal fees, the principal loan and the
11 legal fees and the interest rate.

12 Q. Do you remember how much the total was?

13 A. At one point it was \$430,000, I believe, and that is after
14 deducting the \$55,000 credit bid I had to make to acquire the
15 oil wells.

16 Q. Did you file a lawsuit against Spirit Bear?

17 A. I did.

18 Q. Was that settled?

19 A. We won summary judgment, and eventually it was settled.

20 Q. How much were you able to sell them for?

21 A. 282,000 and change.

22 MS. MAGDO: Just one moment.

23 (Off-the-record discussion)

24 MS. MAGDO: No further questions.

25 THE COURT: Cross-examination. Just so everyone knows

GCKJOLI2

Jaeger - cross

1 in about 7 or 8 minutes, we are going to break for lunch.

2 MR. DeVITA: Do you want to break now, Judge?

3 THE COURT: No, because I am meeting someone in about
4 14 minutes.

5 CROSS-EXAMINATION

6 BY MR. DeVITA:

7 Q. Good afternoon, Mr. Jaeger. My name is James DeVita. We
8 have never met before, have we?

9 A. No.

10 Q. Mr. Jaeger, you bought the Dragon candelabra for \$235,000,
11 right?

12 A. Correct.

13 Q. You sold them for a net of \$650,000, including the store
14 credit?

15 A. Correct.

16 Q. So that's a profit of \$418,000?

17 A. Pretax, yes.

18 Q. So 653 -- sorry -- the 603,000 you received in cash?

19 A. Yep.

20 Q. And that was net of whatever may have been before that,
21 right?

22 A. (No answer)

23 Q. And you held that for approximately one year?

24 A. 11 months.

25 Q. 11 months? So you made a \$418,000 profit in 11 months?

GCKJOLI2

Jaeger - cross

1 A. The math doesn't work for me, sir.

2 Q. Well, \$418,000, you bought it for 235, you realized 653 --

3 A. No. I sold it for 603 in cash. I bought it for 235 in
4 cash. The net is that difference.

5 Q. Well, you got a store credit of 50,000?

6 A. Correct.

7 Q. So you include that in the compensation you received?

8 A. Okay.

9 Q. 418,000, right?

10 A. If you use the 50,000 store credit.

11 Q. You did use the 50,000 store credit?

12 A. I did a year later, sir.

13 Q. So you used it?

14 A. Yes.

15 Q. If you had not, if it hadn't been for Robert Olins, you
16 would not have made any of that money, right?

17 A. Probably.

18 Q. In fact, there was a time when you were considering pulling
19 the Dragon candelabra from Mallett because you weren't happy
20 with how they were marketing it, right?

21 A. That's correct.

22 Q. And there was a period of time when you were not getting
23 along with Henry Neville, right?

24 A. I don't know about not getting along. We had words, but
25 that is the course of the business.

GCKJOLI2

Jaeger - cross

1 Q. You had severe words, right?

2 A. I don't know what "severe words" are, but, yes.

3 Q. Did you yell at him?

4 A. I might have.

5 Q. You did, didn't you?

6 A. I might have.

7 Q. I am asking you if you did?

8 A. I don't recall I yelled at him.

9 Q. But, in any event, it became necessary for Mr. Olins to be
10 the intermediary between you and Mr. Neville, right?

11 A. I think it helped.

12 Q. At one time you were going to put the candelabra in an
13 auction? You were considering that, right?

14 A. I considered it, yeah.

15 Q. And Mr. Olins talked you out of it?

16 A. Ah-huh.

17 Q. He told you that that would result in a much lower price
18 than you would have realized in a private sale?

19 A. I believe so.

20 Q. At one time you asked him to go back to the original
21 seller, and he told you the original seller wasn't interested?

22 A. Yes. I think it was a Kugel, K U G E L, and I don't know
23 if he ever spoke to them. He did say they weren't interested.

24 Q. Let me ask you to look again at the Government Exhibit 303,
25 the handwritten notes. You said that the \$182,000 was the

GCKJOLI2

Jaeger - cross

1 difference between the 250 you were thinking of or you were
2 prepared to offer and the 432,000 that he told you that was a
3 valuation that the bank considered?

4 A. Ah-huh.

5 Q. On this asset, right?

6 A. That's correct.

7 Q. Did Mr. Neville tell you that there had been a plan -- you
8 discussed these candelabra with Mr. Neville before he bought
9 them, right?

10 A. Yes.

11 Q. Did he tell you there had been a proposed sale earlier in
12 2012?

13 A. No.

14 Q. Did you ever talk to Mr. Rusco about an earlier proposed
15 sale?

16 A. No.

17 Q. You talked to him many times with Mr. Rusco, though?

18 A. Yes.

19 Q. Did you ever ask Mr. Rusco where this 432 figure came from?

20 A. No.

21 Q. But if you understood that Mr. Neville would still be
22 obligated to the bank for that under this calculation, the
23 \$182,000, if that was the difference between the earlier price,
24 the 432 and the 250, right?

25 MS. MAGDO: Objection. I don't think Mr. Neville was

GCKJOLI2

Jaeger - cross

1 obligated to the bank.

2 Q. I am sorry. Mr. Olins. Let me rephrase the question.

3 THE COURT: I think that is a good idea.

4 BY MR. DeVITA:

5 Q. You knew that this Dragon candelabra was an asset that the
6 bank held as collateral?

7 A. That's correct.

8 Q. And you knew that if the bank sold it for \$432,000, that
9 would reduce Mr. Olins' obligation to the bank in that amount?

10 A. That's correct.

11 Q. If it sold for \$250,000, you knew that there would be a
12 \$182,000 difference between the reduction in his debt on that
13 second lower sale, right?

14 A. That's correct.

15 Q. You also know -- you can sit here and calculate today --
16 that the difference between 432,000 and 800,000 is 197,000,
17 right?

18 A. Say again.

19 Q. The difference between 432,000 and 800,000 is 197, right?

20 THE COURT: I think you are going to have to try your
21 math again, Mr. DeVita.

22 (Pause).

23 BY MR. DeVITA:

24 Q. I am confusing the two different numbers.

25 The difference between what you actually paid and the

GCKJOLI2

Jaeger - cross

1 432 is the 197,000?

2 A. That's correct.

3 Q. So in terms of -- let me ask you to look at the bill of
4 sale for the Dragon candelabra. Do we have Exhibit L. (Pause)

5 This is Defense Exhibit L. That is the bill of
6 sale --

7 (off-the-record discussion)

8 BY MR. DeVITA:

9 Q. That is the bill of sale that you received in connection
10 with this sale?

11 A. I am not so sure that the last two pages were attached to
12 it, but the bill of sale --

13 Q. The court order?

14 A. Yeah.

15 Q. The bill of sale, the one on the first page you recognize?

16 A. Yes.

17 Q. You were specifically asked to receive the dragon
18 candelabra free and clear of any rights, titles, interest or
19 liens. Isn't that right?

20 A. Yes.

21 Q. That was in your letter to the bank that a condition of
22 your purchasing was to receive it free and clear of any liens,
23 right?

24 A. As I understood then, it would go through the process.

25 Q. Right. So you understood whatever profit was made from the

GCKJOLI2

Jaeger - cross

1 sale of the candelabra, you had complete discretion about its
2 allocation, right?

3 A. Yes.

4 Q. You didn't owe anything to the bank, right?

5 A. I didn't owe anything to the bank, that's correct.

6 Q. Mr. Olins was still on the hook for the difference between
7 the 432 -- I mean he only received debt reduction to the extent
8 of \$235,000, right?

9 A. That's correct.

10 MS. MAGDO: I am not sure he has a foundation for
11 saying what Mr. Olins debt would then be --

12 THE COURT: I think he is inquiring what the witness's
13 understanding was of the transaction. Is that correct?

14 MR. DeVITA: Correct.

15 THE COURT: Is that your understanding, Mr. Jaeger?

16 From this transaction, to the extent that Mr. Olins
17 received any debt reduction from the bank, that it would have
18 been the purchase price, the \$235,000. Is that your
19 understanding?

20 THE WITNESS: Yes.

21 MR. DeVITA: Your Honor, this would be a convenient
22 time.

23 THE COURT: All right. Let's break and we will start
24 up again at 2:00 o'clock. I assume I should instruct Mr.
25 Jaeger that he should not communicate with the government since

GCKJOLI2

Jaeger - cross

1 he is on cross?

2 MR. DeVITA: That's correct.

3 THE COURT: Is that okay with everybody?

4 MR. DeVITA: Yes.

5 THE COURT: Mr. Jaeger, you should not communicate
6 with any representatives of the government because you're on
7 cross-examination. Please be back here a minute or two before
8 2:00 o'clock so we can resume at 2:00 o'clock.

9 MS. MAGDO: For planning purposes, does the court have
10 any idea how late the court is willing to sit today?

11 THE COURT: Why don't we let Mr. Jaeger step down and
12 chat about where this is going.

13 (The witness left the courtroom).

14 THE COURT: I am sort of sensing that we may not
15 finish in one day, but perhaps I'm being unduly pessimistic.

16 Mr. DeVita, do you have any sense of how much longer
17 you have on cross of Mr. Jaeger?

18 MR. DeVITA: I would guess at most a half hour.

19 THE COURT: All right. So you tell me. I assume
20 Mr. Neville will perhaps be the longest witness. In that
21 regard, we may not finish today. Again maybe that is not
22 correct?

23 MS. MAGDO: We estimate the direct examination of
24 Mr. Neville will take between 60 and 75 minutes, and then the
25 direct examination of Ms. Meister will take 10 to 15 minutes.

GCKJOLI2

Jaeger - cross

1 THE COURT: All right. I guess the short answer to
2 your question is I am prepared to stay until the end of the
3 day, which is 5:00 o'clock. That is not the end of my day, but
4 the end of the court day.

5 Why don't we just see where we are at that point and
6 we can figure out what to do. I am also available tomorrow
7 morning. So I will tell you that now and we can resume then.
8 I think that might be ideal if we are not done because these
9 matters will be fresh in my mind. We can take that up later
10 and you guys can talk about it at the break.

11 (Luncheon recess)

12 (Continued on next page)

Gck2oli3

Jaeger - Cross

A F T E R N O O N S E S S I O N

2:00 p.m.

THE COURT: You may be seated.

Mr. Jaeger, if you come back on up to the stand, we will resume.

MR. DeVITA: May I proceed, your Honor?

THE COURT: You may.

Mr. Jaeger, you are still under oath, and we will pick up from where we left off.

You may proceed.

MR. DeVITA: Thank you, your Honor.

BY MR. DeVITA:

Q. Mr. Jaeger, you testified on direct examination that you saw a copy of an invoice for the wall brackets that was made out to Mr. Olins, right?

A. Yes.

Q. Was it Henry Neville that showed you that?

A. I don't recall.

Q. You, at the same time that you were considering the wall brackets as part of this -- the negative pledge of the wall brackets as part of this loan, that's the same time you were dealing with Mr. Neville in consigning the -- about whether you would consign --

THE COURT: Why don't you start that one over?

MR. DeVITA: I just noticed I'm not standing next to

Gck2oli3

Jaeger - Cross

1 the microphone.

2 THE COURT: I think that was the least of your
3 problems, but go ahead.

4 MR. DeVITA: No, you are right.

5 BY MR. DeVITA:

6 Q. This was the same time frame when you were meeting with
7 Mr. Neville about consigning the dragon candelabra for Mallett,
8 right?

9 A. I don't remember the date that is we are talking about
10 here, so, I would --

11 Q. It was December of 2012, November, December --

12 A. November, December 2012, correct.

13 Q. And you were doing due diligence both with respect to the
14 wall brackets and with respect to the dragon candelabra?

15 A. Well, I had already done the due diligence on the dragon
16 candelabras, and I was also doing the diligence on the wall
17 brackets, that is correct.

18 Q. And you knew that the wall brackets were with Mallett,
19 right?

20 A. I wasn't 100 percent sure, but, yes, the answer is yes.

21 Q. Now, am I correct that there was a period of time, about
22 ten years, when you were estranged from Mr. Olin?

23 A. That is correct.

24 Q. And you told the government, I think, that that was related
25 to an investment in Spatia Light, right?

Gck2oli3

Jaeger - Cross

1 A. That's correct.

2 Q. You -- Mr. Jaeger, you were instrumental in making
3 introduction for Spatia Light to some folks who invested, isn't
4 that right?

5 A. That's correct.

6 Q. And that was someone called The Alabama Group?

7 A. That's correct.

8 Q. And the individual who put together The Alabama Group was
9 Mr. Twifer?

10 A. That's correct.

11 Q. That was someone that you knew?

12 A. That's right.

13 Q. As a consequence of that, did you receive warrants from
14 Spatia Light?

15 A. I did not.

16 Q. Did your brother receive warrants from Spatia Light?

17 A. I believe he did, yes.

18 Q. So you made the introduction. Your brother got the
19 warrants?

20 A. That's not exactly how it happened.

21 Q. Exactly how did it happen?

22 A. I introduced Mr. Olins to The Alabama Group. The Alabama
23 Group decided to make an investment into Spatia Light, and
24 Mr. Olins then came back and asked me if I knew of anybody who
25 would be interested in investing in the warrants. And I then

Gck2oli3

Jaeger - Cross

1 spoke to my brother, and he was interested in investing in
2 those warrants.

3 Q. So he purchased warrants?

4 A. Yes.

5 Q. And the warrants were for restricted stock, correct?

6 A. I believe so, yes.

7 Q. And when it came time for your brother -- there came a time
8 when your brother -- by the way, you at the time were employed
9 at Bear Stearns?

10 A. That's correct.

11 Q. So you couldn't invest directly yourself, right?

12 A. That's correct.

13 THE COURT: What time are we talking about here.

14 MR. DeVITA: 1998.

15 THE COURT: You have to give the answers.

16 What time are we talking about?

17 THE WITNESS: Yes, I would say 1988, '99, something
18 like that.

19 Q. '98.

20 A. Yes.

21 THE COURT: Mr. Jaeger, there is a sort of comfort
22 zone for the microphone of a couple of inches away is kind of
23 ideal distance. It's a little tricky in this courtroom. But
24 if you could aim for that, that would be great.

25 THE WITNESS: You got it.

Gck2oli3

Jaeger - Cross

1 BY MR. DeVITA:

2 Q. So did your brother -- how much did your brother pay for
3 the warrants, do you recall?

4 A. I don't recall.

5 Q. But he did pay for them?

6 A. Yes, I believe so.

7 Q. You believe so?

8 A. I believe he did, yes.

9 Q. You are not sure.

10 A. He paid for the warrants.

11 Q. And the warrants, as I said, were -- the exercise of the
12 warrants would give rise to the issuing of restricted shares?

13 A. Yes, converted to restricted shares.

14 Q. The warrant is an option. So it's an option to purchase
15 restricted shares. Correct?

16 A. Correct.

17 Q. You have to answer yes or no.

18 A. Correct, yes.

19 Q. Nodding your head, the court reporter can't get.

20 And the warrants required payment of money to exercise
21 them. There was a strike price?

22 A. Yes.

23 Q. And if you purchased restricted shares, then you couldn't
24 sell those shares to cover what you paid to exercise the
25 warrants, right?

Gck2oli3

Jaeger - Cross

1 A. Say it again? I'm sorry.

2 Q. If you can't sell the shares, you have to pay the exercise
3 price out of your pocket, right?

4 A. Yes.

5 Q. But if you can turn around and sell the shares, you could
6 cover the cost of purchasing, right?

7 A. Yes.

8 Q. And so you came to Mr. Olins and asked him if he would find
9 someone that would trade the restricted shares that were
10 exercisable for unrestricted shares, isn't that right?

11 A. No.

12 Q. Do you know someone named Derek Brierly.

13 A. The name does not ring a bell.

14 Q. Isn't it a fact that you or your brother, whoever was
15 exercising the shares was able to get unrestricted shares and
16 sell them?

17 A. I think Mr. Olins arranged that, yes.

18 Q. He arranged an exchange of the restricted shares for
19 unrestricted shares.

20 A. That's my understanding, yes, or part of them, yes.

21 Q. As a consequence of that transaction, there was a profit
22 made of about a million dollars?

23 A. I would say that's about right.

24 Q. And, in fact, you used the money to buy a house in the
25 Hamptons?

Gck2oli3

Jaeger - Cross

1 A. No, that's not correct.

2 Q. Did your brother buy a house in the Hamptons?

3 A. No, he didn't.

4 Q. But, in any event, there was a profit of about a million
5 dollars?

6 A. There was a profit which he paid full taxes on, yes.

7 Q. But it was a profit of a million dollars?

8 A. Yes.

9 Q. What happened to the restricted shares that he traded to
10 get the unrestricted shares?

11 A. Don't know.

12 Q. You know that Spatia Light went bankrupt, right?

13 A. Yes, I do.

14 Q. So that the restricted shares that your brother got under
15 the warrants became worthless?

16 A. I'm not so sure I understand.

17 Q. Okay. The restrictions on the restricted shares did not
18 lapse before bankruptcy, did they?

19 A. Were all the restricted shares traded out for common or
20 unrestricted shares?

21 Q. No. I'm talking about the transaction involving you or
22 your brother. Isn't it a fact that the shares your brother
23 traded to get the unrestricted shares became worthless?

24 A. I don't know.

25 Q. So if Mr. Olins had not arranged the transaction, instead

Gck2oli3

Jaeger - Cross

1 of getting a million dollars profit, your brother would have --

2 A. I don't know when the warrants -- I don't know when the
3 restrictions lapsed.

4 Q. You don't remember.

5 A. I don't remember.

6 Q. But you held it against Mr. Olins that there was a discount
7 in the trade for the restricted shares to the unrestricted
8 shares, is that right?

9 A. No.

10 Q. That's not right.

11 A. That's not right.

12 Q. You didn't hold it against him that your brother received
13 460 instead of 600,000 shares?

14 A. That's correct.

15 Q. That is correct?

16 A. Yes.

17 Q. So he got 460,000 unrestricted shares in exchange for the
18 600,000 restricted --

19 A. He bought 600,000 shares originally of which all were
20 restricted and --

21 Q. I thought you said warrants.

22 A. Warrants, sorry.

23 Q. So he bought warrants?

24 A. Bought warrants.

25 Q. For 600,000 shares?

Gck2oli3

Jaeger - Cross

1 A. Yes.

2 Q. That were restricted.

3 A. That were restricted. And Mr. Olins, I understand
4 Mr. Olins exchanged 460,000 of those into free trading shares.
5 The other 160 disappeared, so we don't know what happened to
6 those.

7 THE COURT: By 160, you mean 140?

8 THE WITNESS: 140, sorry.

9 Q. 30 percent discount, right, in the exchange for restricted
10 shares for unrestricted shares?

11 A. That's not the deal. That's the math, but that wasn't the
12 deal.

13 Q. You thought that someone would exchange freely traded
14 shares for an equal number of restricted shares?

15 A. Why not?

16 Q. Because they are restricted. That's why not. You wouldn't
17 have done that as an investment banker, would you?

18 A. I might have.

19 Q. You would make a straight up exchange 600,000?

20 MS. MAGDO: He has answered the question.

21 THE COURT: There is a new question being posed. Go
22 ahead.

23 Q. You are saying that, as an investment banker, you would
24 straight up trade 600,000 unrestricted shares in exchange for
25 600,000 restricted shares?

Gck2oli3

Jaeger - Cross

1 A. It depends on the restrictions.

2 Q. Time restrictions.

3 A. Are they all different?

4 Q. Time restrictions?

5 A. Were they all different, sir? They have different
6 strengths.

7 Q. You were there, Mr. Jaeger.

8 THE COURT: Gentlemen --

9 A. It was 15 years ago.

10 THE COURT: -- number one, stay two to three inches
11 away from the microphone.

12 Number two, you each need to wait for the other to
13 finish before you said say anything so that we can all
14 understand what's being said and the court reporter can take it
15 down. All right?

16 Number three, you answer the questions. You don't
17 pose the questions. So you have to answer the questions that
18 Mr. DeVita asks. If you can't, then you can tell him that, but
19 that's the way this works.

20 Go ahead.

21 BY MR. DeVITA:

22 Q. But the fact of the matter is, Mr. Olins arranged for your
23 brother to receive unrestricted shares that he sold for a
24 million dollars profit, and you held a grudge against him for
25 ten years, right?

Gck2oli3

Jaeger - Cross

1 A. No.

2 Q. You didn't hold a grudge against him for ten years?

3 A. No, but you are not framing the question right.

4 Q. Well, I am framing the question. You listen to it
5 carefully.

6 Your brother exchanged 460,000 -- 600,000 restricted
7 shares for 460,000 unrestricted shares, right?

8 A. That's correct.

9 Q. He sold the unrestricted shares for a million dollars
10 profit.

11 A. Correct.

12 Q. And as far as you know, when Spatia Light went bankrupt,
13 those unrestricted shares became worth zero?

14 A. Who is to say that the other 140,000 shares were not to be
15 coming over as well as unrestricted? You are making a
16 supposition that because he gave 460 and converted them in
17 clean shares that he had no obligation or said about the other
18 140, right?

19 THE COURT: Do you know how the 140,000 figured into
20 this transaction if at all?

21 THE WITNESS: Well, there was 600,000 purchased. We
22 only received 460 or he only received 460, so he was
23 shortchanged 140.

24 Q. Shortchanged if he got unrestricted shares?

25 A. Who is to say that the other 140 weren't converted into

Gck2oli3

Jaeger - Cross

1 unrestricted shares and given to somebody else?

2 Q. Did somebody force him to go into that transaction?

3 A. I'm sorry?

4 Q. Did someone force that transaction on him?

5 A. No.

6 Q. So he willingly exchanged 600 restricted shares for 460
7 unrestricted shares?

8 A. No. He willingly exchanged 460,000 shares for 460,000
9 unrestricted shares.

10 Q. I thought you said he had 600,000 shares.

11 A. He did.

12 Q. And he exchanged the 600,000 for 460 unrestricted, right?

13 A. That's correct.

14 Q. And then sold them for a million dollars profit?

15 A. Yes.

16 Q. And you held a grudge against my client for ten years as a
17 consequence, correct?

18 A. Yes.

19 Q. Now, you mentioned also on your direct examination that, as
20 part of the loan transaction, you received 25 HPEV preferred
21 shares, right?

22 A. That's correct.

23 Q. And those preferred shares were convertible into common
24 stock.

25 A. That's correct.

Gck2oli3

Jaeger - Cross

1 Q. And you in fact converted some of those?

2 A. I did.

3 Q. Now, this was not -- these were shares that you did not pay
4 anything for. They were part of the consideration for making
5 the loan?

6 A. Considerations, yes, paid for them.

7 Q. You didn't pay dollars to get the shares?

8 A. I gave a \$340,000 loan.

9 Q. You gave a \$340,000 loan and received, in addition to the
10 repayment of most of the loan, these restricted -- these
11 preferred shares, right?

12 A. I received a 12 percent interest rate and additional
13 consideration for a risky loan that I gave for \$340,000, that's
14 correct, that defaulted twice, that's correct, yes.

15 Q. And you converted the preferred shares?

16 A. I converted, yes, I converted some of the shares.

17 Q. How many?

18 A. At one point I think -- they are all converted now, but at
19 one point they were different conversion levels.

20 Q. So you converted to a million shares?

21 A. 1.25 million shares, that's correct.

22 Q. And you sold some of those?

23 A. Some of them.

24 Q. And you sold some of those in April of 2014, isn't that
25 right?

Gck2oli3

Jaeger - Cross

1 A. I would have to look.

2 Q. Let me show you a letter.

3 MR. DeVITA: Your Honor, I have an exhibit that I am
4 going to mark as Defendant's Exhibit's --

5 MR. CECUTTI: -- K.

6 MR. DeVITA: Unfortunately, I don't have any copies.
7 I have shown it to the government and I can show it to your
8 Honor. I just want it to use to refresh Mr. Jaeger's
9 recollection.

10 THE COURT: Why don't you show it to the government,
11 please.

12 MR. DeVITA: I have shown it to them. I showed it to
13 them on the break.

14 THE COURT: So you can give it to the witness.

15 BY MR. DeVITA:

16 Q. Does that refresh your recollection about the timing of at
17 least 400,000 shares that you sold?

18 (Pause)

19 A. This gives me the right --

20 THE COURT: The question is, does it refresh your
21 memory about whether you sold shares in April of 2014? Yes or
22 no.

23 THE WITNESS: No.

24 THE COURT: All right. You can give it back to
25 Mr. DeVita.

Gck2oli3

Jaeger - Cross

1 BY MR. DeVITA:

2 Q. In order to sell the shares, you needed -- they weren't
3 registered shares, were they? They weren't registered under
4 section 5 of the --

5 A. That's correct.

6 Q. -- the Securities Act?

7 So you had to rely on an exemption to Rule -- under
8 Rule 144, correct?

9 A. Correct.

10 Q. And you had to provide a statement that you didn't have any
11 inside information relating to the company, among other things?

12 A. Correct.

13 Q. But the -- how much did you sell those -- your shares for?

14 A. I don't recall.

15 Q. Is it in excess of \$800,000 all told?

16 A. It depends when those 400,000 were sold because that just
17 gives me the right to sell, sir.

18 Q. Did you in fact sell HPEV stock that you got by converting
19 the preferred stock --

20 A. Yes.

21 Q. -- that you received in connection with the Spirit Bear
22 loan?

23 A. Yes.

24 Q. How much did you sell it for total?

25 A. I would have to get back to you on that number.

Gck2oli3

Jaeger - Cross

1 Q. Give me an approximation.

2 A. I don't remember if the stock was traded 30 cents or a
3 dollar or a dollar fifty at the time of that letter.

4 Q. It was trading at about \$2 in April of 2014, wasn't it?

5 MS. MAGDO: Objection.

6 THE COURT: Overruled. "Yes" or "no" or "I don't
7 know."

8 A. I don't know.

9 Q. Did you make in excess of \$100,000 on your sale of HPEV
10 stock?

11 A. To date?

12 Q. Yes.

13 A. Yes.

14 Q. Did you make in excess of \$500,000?

15 A. Probably.

16 Q. Did you make in excess of a million dollars?

17 A. I don't think so.

18 Q. So somewhere between 500,000 and a million dollars?

19 A. Sounds right.

20 Q. And that was the stock that you received just for making
21 the loan, yes?

22 A. Yes.

23 Q. Now, you testified on direct examination that you did not
24 know that Mallett received \$800,000 cash in the sale of the
25 dragon candelabra, is that right?

Gck2oli3

Jaeger - Cross

1 A. Of what?

2 Q. You testified that you did not know that Mallett, when it
3 sold the dragon candelabra, received \$800,000?

4 A. That's correct.

5 Q. Let me show you what's been marked for identification, I
6 guess in evidence at the hearing, as Defense Exhibit N as in
7 "Nancy."

8 Is that an exchange of e-mails between yourself and
9 Henry Neville?

10 A. Yes.

11 Q. The first e-mail is from you to Mr. Neville and it says,
12 "Dear Henry, thank you for all your hard work on my behalf.
13 Please wire \$600,000 to the following account per the
14 instructions below. Once the wire has been sent, please send
15 me a confirmation number so I can alert my banker."

16 Of course, you don't say in there please wire "the"
17 \$600,000?

18 THE COURT: It actually says 603,000.

19 BY MR. DeVITA:

20 MR. DeVITA: 603,000. I'm sorry.

21 Q. It doesn't say "the" 603,000, correct?

22 A. Right.

23 Q. Then the response to that, from Mr. Neville, is "Dear
24 Bruce, I will send you all of the paperwork tomorrow."

25 Then you respond, "Henry, per your e-mail below, when

Gck2oli3

Jaeger - Cross

1 can I expect the wire for \$603,000 as well as the paperwork?

2 Thank you."

3 And then Mr. Neville responds, "The payment will be
4 wired to you so that you can have cleared funds before the end
5 of the week. The money is coming in from Europe, so it can
6 take up to three days to clear, which is why I am being a
7 little conservative as to the exact day and to when" -- I think
8 that's a typo, but -- "you will receive the funds. The
9 paperwork is coming from London and should be with us on
10 Monday, and I will walk it up to 88th Street as soon as we
11 receive it here in the gallery."

12 88th Street is where you live?

13 A. Yes.

14 Q. So Mr. Neville is saying that he will physically bring the
15 paperwork of the bill of sale to you, correct?

16 A. That's correct.

17 Q. And then you say, "Thank you. The bill of sale for the
18 dragon candelabras will be for \$603,000 for reporting purposes,
19 correct?" That's what it says.

20 A. Yeah.

21 Q. Now, why would it be for anything other than \$603,000?

22 A. As I mentioned before, they sent me an invoice incorrectly
23 for 800,000.

24 Q. This is before he sent the invoice, isn't it?

25 A. This is before he sent the invoice?

Gck2oli3

Jaeger - Cross

1 Q. Because he is saying to you on, Friday, November 8, "I'll
2 walk the papers up on Monday."

3 A. No. They e-mailed me, I believe, the invoice. I have to
4 look.

5 Q. Well, but he is saying to you in this e-mail that he would
6 bring them up to you on November 8. On Monday -- on Friday,
7 November 8, he is saying to you, I will bring them to you on
8 Monday, correct?

9 A. Correct.

10 Q. So there is no e-mail -- there is no invoice with this
11 e-mail?

12 A. I'm not sure I understand.

13 Q. This is talking about what the e-mail says -- what the bill
14 of sale is going to say before it is issued, right? His e-mail
15 says to you, "Paperwork is coming from London. Should be with
16 us on Monday." So this is Friday, November 8. He is telling
17 you the paperwork should be there on Monday. Right?

18 A. That looks correct.

19 Q. And you are saying to him, "Thank you. Bill of sale for
20 the dragon candelabras will be for \$603,000 for reporting
21 purposes, correct?"

22 A. Correct.

23 THE COURT: Can I ask a question, Mr. Jaeger? If I
24 remember correctly, you testified that you initially received
25 an invoice indicating that the sale price was \$800,000. Is

Gck2oli3

Jaeger - Cross

1 that correct.

2 THE WITNESS: That's correct.

3 THE COURT: When was that in relation to this exchange
4 of e-mails?

5 THE WITNESS: It had to be before this.

6 MR. DeVITA: No, it was after this.

7 THE WITNESS: I don't believe so.

8 BY MR. DeVITA:

9 Q. Why would you be saying that it will be for \$603,000 if you
10 have already received one?

11 A. Because that one was sent in error.

12 Q. I'm sorry?

13 A. How would I know it was sent in error if I hadn't received
14 it?

15 Q. You hadn't received it.

16 A. No, how would I have known the bill was in error if I had
17 not received it? Obviously I received it.

18 Q. Well, obviously you are asking him to make a bill of sale
19 out for 603 and not 800,000, correct?

20 A. No, I didn't ask him. I asked his assistant, while he was
21 traveling, when I got an 800,000 bill that was incorrect, okay,
22 to go back to Henry and ask what had happened. They then came
23 back and said it was a mistake, discard the bill, and they will
24 send me the corrected bill for \$603,000, plus a store credit.

25 Q. But that all took place after this e-mail, correct?

Gck2oli3

Jaeger - Cross

1 A. No, I don't think so.

2 (Pause)

3 MR. DeVITA: Your Honor, I apologize that I only have
4 one copy of it.

5 (Pause)

6 MR. DeVITA: Your Honor, these are documents produced
7 to us by the government. I don't have additional copies, and I
8 would like to rely on them. I will show your Honor.

9 THE COURT: May I see them?

10 MR. DeVITA: Yes.

11 (Pause)

12 MR. DeVITA: We can provide copies.

13 THE COURT: Is the second page part of Defense Exhibit
14 O?

15 MR. DeVITA: Yes, your Honor.

16 THE COURT: All right. Why don't you make sure you
17 make copies later --

18 MR. DeVITA: Yes. Thank you, your Honor.

19 THE COURT: -- but you may proceed.

20 BY MR. DeVITA:

21 Q. Mr. Jaeger, showing you Defendant Exhibit O, which is a
22 November 14, 2013, letter to you with the name -- from Mallett
23 as well as an attached "credit note" dated November 14, 2013.

24 Is that the \$800,000 invoice you were referring to?

25 A. It looks like the one I received incorrectly, yes.

Gck2oli3

Jaeger - Cross

1 Q. And it is dated November 14, right?

2 A. It is.

3 Q. And the e-mail we were looking at is November 8.

4 A. I have to look at the date of sale versus the date of the
5 bill.

6 Q. It's right there. November 8 is the e-mail, right?

7 A. November 8 is the e-mail, right.

8 Q. Okay. And let me show you what's been marked as
9 Defendant's Exhibit P.

10 Is that the revised invoice that you were talking
11 about for \$603,000?

12 A. You mean the one that has the actual date of sale on it?

13 Q. Is that the invoice for \$603,000 that you were talking
14 about?

15 A. With the actual date of sale, yes.

16 Q. And it shows November --

17 A. These other bills, whatever you have here, don't have the
18 actual date of sale on it. This is the right -- this is the
19 correct date of sale.

20 Q. Yeah, but the document is dated November 19, right?

21 A. Um-hmm.

22 Q. Okay.

23 A. That's the date of the sale.

24 Q. Whether it's the date of the sale or not, your e-mail
25 exchange with Mr. Neville in which you say to him, issue a

Gck2oli3

Jaeger - Cross

1 \$603,000 for reporting purposes, is November 8, right?

2 A. I must have received the incorrect invoice earlier.

3 Q. It is dated November 14, isn't it?

4 A. Yeah. I don't remember even seeing that one. I know I
5 have seen November 19. There's 20 different.

6 THE COURT: Mr. DeVita, can you go back to the podium,
7 please.

8 MR. DeVITA: Yes.

9 BY MR. DeVITA:

10 Q. The e-mail, which is Exhibit N, indicates -- in it
11 Mr. Neville says to you, "The paperwork is coming from London,
12 in from London. Should be with us on Monday. And I will walk
13 it up to 88th Street as soon as we receive it here in the
14 gallery."

15 So that means that on November 8, 2013, he did not
16 have the paperwork, right?

17 A. I guess so.

18 Q. Excuse me?

19 A. I guess so, yeah.

20 Q. And then you say, "Thank you. Bill of sale will be" --
21 future tense -- "will be for \$603,000" --

22 A. The correct number, that's correct.

23 Q. -- "for reporting purposes, correct?"

24 A. For sale and reporting purposes.

25 Q. For reporting purposes, right?

Gck2oli3

Jaeger - Redirect

1 A. For sale and reporting purposes.

2 THE COURT: The question is what does the e-mail say?
3 The e-mail says for reporting purposes, correct?

4 THE WITNESS: For reporting purposes, correct.

5 MR. DeVITA: I have no further questions, your Honor.

6 THE COURT: Redirect.

7 REDIRECT EXAMINATION

8 BY MS. MAGDO:

9 Q. Mr. Jaeger, the agreement that you reached with Mallett
10 regarding the dragon candelabra was \$603,000 in cash to you.
11 That was part of it, correct?

12 A. That's correct.

13 Q. And the other part of it was a \$50,000 store credit at
14 Mallett, is that correct?

15 A. That's correct.

16 Q. When you testified earlier, you said that you considered
17 your profit from the sale of the dragon candelabra to be
18 \$603,000, correct?

19 A. That's correct.

20 Q. Rather than \$653,000, correct?

21 A. Two separate tax years, correct.

22 Q. Right, they are different tax treatments. Is that what
23 your position was?

24 A. That's correct, yes.

25 Q. So after the deal is consummated, or at least agreed to

Gck2oli3

Jaeger - Redirect

1 orally, but before you get the paperwork, did you have any
2 concern that Mallett would send you an invoice reflecting a
3 \$653,000 profit?

4 A. No.

5 Q. Did you want to have an invoice that reflected the two
6 amounts lumped together or invoices reflecting the two amounts
7 separately?

8 A. Separately.

9 MR. DeVITA: Objection, your Honor, to the compound
10 nature and the leading.

11 THE COURT: I will overrule the objection, but
12 obviously watch the form of your questions, please.

13 MS. MAGDO: Okay.

14 BY MS. MAGDO:

15 Q. How did you want to receive -- explain how you wanted to
16 receive invoices reflecting the cash and the credit that you
17 received in exchange for the dragon candelabra?

18 A. I sold the dragon candelabra for \$603,000 of cash nine
19 months, okay, or ten months -- maybe it was 11 months actually,
20 it was short term capital gains. So I received \$603,000 sale
21 on a bill of sale. That was correct. And I can't attest to
22 all the others. And I paid \$235,000. So, on my tax returns,
23 okay, in 2013, I showed a short term capital gain of 603 minus
24 the 235. And then, in the subsequent year, when the actual
25 \$50,000 store credit was used, per my accountant's advice, I

Gck2oli3

Jaeger - Redirect

1 declared that as ordinary income in 2014.

2 Q. So the two forms of compensation that you -- consideration
3 that you received for the dragon candelabra, you treated
4 separately for reporting purposes?

5 A. Per my accountant's advice, yes.

6 Q. And you actually -- they were reported in different years?

7 A. That's correct.

8 Q. So if Mallett had sent to you an invoice for \$653,000, what
9 would you have done? Just lumping it all together.

10 A. I would have asked them to bifurcate it.

11 Q. Was there ever -- did you know at the time, in November
12 2013, that the net commission price on the dragon candelabra
13 was \$800,000?

14 A. No.

15 MS. MAGDO: Nothing further.

16 MR. DeVITA: Nothing further, your Honor.

17 THE COURT: All right, Mr. Jaeger, you may step down.

18 (Witness excused)

19 THE COURT: Ms. Magdo, your next witness.

20 MS. GRISWOLD: The government calls Michael Henry
21 Neville.

22 MICHAEL HENRY GARTSIDE NEVILLE,

23 called as a witness by the government,

24 having been duly sworn, testified as follows:

25 THE COURT: You may proceed.

Gck2oli3

Neville - Direct

1 MS. GRISWOLD: Thank you, your Honor.

2 DIRECT EXAMINATION

3 BY MS. GRISWOLD:

4 Q. Good afternoon, Mr. Neville.

5 Do you go by Michael or Henry?

6 A. Henry.

7 Q. Are you currently working?

8 A. No, I am not.

9 Q. When did you stop working?

10 A. In 2000 and -- May, end of May, end of May. 20 --

11 Q. 2015?

12 A. Yes. When Mallett released me, I think it was -- just one
13 moment, while I recollect, end of May 2000 -- this year, when I
14 was charged, so that would have been this year, 2016, I
15 believe.

16 THE COURT: Mr. Neville, let me ask you to put the
17 microphone down a little bit and just scoot up a little bit so
18 you are a couple of inches away from the microphone so we can
19 all hear you.

20 THE WITNESS: Yes, certainly.

21 THE COURT: Ms. Griswold.

22 MS. GRISWOLD: Thank you, your Honor.

23 BY MS. GRISWOLD:

24 Q. Mr. Neville, you pled guilty in May --

25 A. Yes.

Gck2oli3

Neville - Direct

1 Q. -- of 2016?

2 A. Correct.

3 Q. And you recall that you stopped working at Mallett how long
4 before you pled guilty?

5 A. I was terminated when I pled guilty.

6 Q. Okay. Thank you.

7 Had you been on a leave of absence prior to that?

8 A. Indeed, I was on a leave of absence prior to then, since
9 the previous July.

10 Q. July of 2015.

11 A. Correct.

12 Q. Approximately when did you initially begin your work at
13 Mallett?

14 A. In the early 1980s.

15 Q. And at that time was Mallett physically located in the
16 U.K., the United Kingdom?

17 A. Yes, it was.

18 Q. Focusing your attention on the time period between 2010 and
19 2015, did Mallett have an office or a gallery in the United
20 States during those years?

21 A. Yes, it did.

22 Q. And was that in New York City?

23 A. Yes, it was.

24 Q. Between 2010 and 2015, were you based at the Mallett
25 location in New York City?

Gck2oli3

Neville - Direct

1 A. Yes, I was.

2 Q. And what was your title in those years between 2010 and
3 2015?

4 A. I was president of Mallett, Inc.

5 Q. Was there anyone senior to you in the New York gallery of
6 Mallett?

7 A. No.

8 Q. Could you briefly describe what your day-to-day duties were
9 at Mallett?

10 A. I was responsible for the maintenance and running of the
11 gallery and its showrooms. I had five or six members of staff
12 and six or seven showrooms with works of art displayed in them.

13 Q. How did Mallett obtain the pieces that it displayed and
14 sold in its gallery?

15 A. We obtained them by purchasing them from private
16 individuals, at auction, from other dealers, and we also had
17 pieces on consignment from collectors to sell on their behalf.

18 Q. Between 2010 and 2015, what was your approximate annual
19 salary at Mallett?

20 A. \$200,000.

21 Q. Per year?

22 A. Per year.

23 Q. Did you receive any commissions of any kind during those
24 years?

25 A. I did not receive any commissions, no.

Gck2oli3

Neville - Direct

1 Q. Did you receive any money from Mallett apart from your
2 salary, again, for those years?

3 A. I received an allowance of \$10,000 a year and occasional
4 use of the company car.

5 Q. And you testified that you stopped working for Mallett in
6 2015. Were you terminated or did you leave by choice?

7 A. I was terminated.

8 Q. In connection with your work for Mallett, did you have a
9 client named Robert Olins?

10 A. Yes, we did.

11 Q. Approximately what year did you first meet Mr. Olins?

12 A. 2009.

13 Q. And when you met him, did you understand Mr. Olins to have
14 a collection of antiques?

15 A. Yes, I did.

16 Q. Did you commit crimes in connection with the sale of one or
17 more items from the defendant's antiques collection?

18 A. Yes, I did.

19 Q. In your own words, could you briefly summarize what it is
20 that you did with the defendant?

21 A. I misled Mr. Rusco, who was a banker working as receiver
22 for the estate, on a piece of Mr. Olins' collection; and, in
23 misleading Mr. Rusco, I caused the court to be misled in his
24 application for the sale to Mallett.

25 Q. Okay. I will ask a few more questions about your conduct a

Gck2oli3

Neville - Direct

1 little later, but, first, I want to ask you, in the fall of
2 2015, did you learn that criminal authorities wanted to speak
3 with you about your involvement in the sale of items from
4 Mr. Olins' collection?

5 A. Yes, I did.

6 Q. And since that time, have you been cooperating with the
7 government?

8 A. Yes, I have.

9 Q. And have you pled guilty to several felonies, including
10 making false statements to the government?

11 A. Yes, I have.

12 Q. Before we talk about specific items in Mr. Olins'
13 collection, let me ask you a few questions about the collection
14 as a whole.

15 In what year did you first learn that Mr. Olins'
16 collection was encumbered in any way?

17 A. I believe it was shortly after the collection was consigned
18 to us, when I was introduced to Mr. Rusco of American Bank &
19 Trust, so late 2009, early 2010.

20 Q. And was it American Bank & Trust that held an interest in
21 the collection?

22 A. I understood it to be American Bank & Trust who held that,
23 yes.

24 Q. And Mr. Rusco is the individual that you dealt with from
25 American Bank & Trust?

Gck2oli3

Neville - Direct

1 A. Yes.

2 Q. Did you understand, when you learned about the interest
3 that American Bank & Trust -- I am just going to call them
4 AB&T -- held on Mr. Olins' collection, did you have an
5 understanding how much Mr. Olins owed AB&T?

6 A. Not at that time, no, but later I came to understand that
7 it was approximately 3 million, I believe.

8 Q. Approximately when did you come to that understanding?

9 A. A year or so later, I think, yes.

10 Q. At the time you learned about the AB&T lien, did you
11 understand that Mr. Olins' collection was encumbered in any
12 other way?

13 A. Not at that time, but later I came to understand that it
14 was also encumbered to the SEC.

15 Q. Okay. Let's turn to some specific pieces in the
16 collection.

17 MS. GRISWOLD: I will ask Ms. Meister to please pull
18 up Government Exhibit 502.

19 Q. You have a binder in front of you, but it should also come
20 up on your screen, so you should use the screen unless you have
21 difficulty.

22 A. Thank you.

23 Q. Are you familiar with the vases depicted in Government
24 Exhibit 502?

25 A. Yes.

Gck2oli3

Neville - Direct

1 Q. Are these items from Mr. Olins' collection?

2 A. These items are three Sevres porcelain vases that were part
3 of Mr. Olins' collection.

4 Q. I am just going to refer to them as "the vases."

5 A. Yes.

6 Q. When were the vases first placed on consignment with
7 Mallett?

8 A. I believe they were part of our original consignment in
9 late 2009.

10 Q. And you understood the vases to be owned by Mr. Olins at
11 that time?

12 A. Indeed.

13 Q. Were the vases placed on consignment with Mallett directly
14 by Mr. Olins or through another antique dealer?

15 A. They were placed on consignment through Mr. Glenn Randall,
16 another antique dealer.

17 Q. And when you took on that consignment, what was the
18 consignment price that Mr. Randall was seeking?

19 A. I believe it was \$850,000.

20 MS. GRISWOLD: I will ask Ms. Meister to please pull
21 up Government Exhibit 111.

22 BY MS. GRISWOLD:

23 Q. Do you see that in front of you, Mr. Neville?

24 A. I do.

25 Q. Are you familiar with this document?

Gck2oli3

Neville - Direct

1 A. This is a document of incoming consignment from Glenn
2 Randall to Mallett.

3 Q. And the date on that is October 2009?

4 A. I see that, yes.

5 Q. Do you see the vases at the top of this exhibit?

6 A. Yes, I do, item number 3.

7 Q. And the consignment price is \$850,000?

8 A. I see that.

9 Q. Do you notice at the bottom of the document --

10 MR. DeVITA: Your Honor, just for the record, this is
11 already in evidence Defense Exhibit A.

12 MS. GRISWOLD: It is a little bit different,
13 Mr. DeVita. It is an unredacted version.

14 MR. DeVITA: Okay. I see.

15 BY MS. GRISWOLD:

16 Q. You see at the bottom, Mr. Neville, a reference to American
17 Bank & Trust Company?

18 A. I do, yes.

19 Q. At the time of the item being consigned, these items being
20 consigned through Mr. Randall, what was your understanding of
21 what the impact was, the fact that AB&T had this encumbrance in
22 terms of what it meant for Mr. Olins' ability to sell these
23 items?

24 A. It meant that Mallett would pay the monies received
25 directly to American Bank & Trust.

Gck2oli3

Neville - Direct

1 Q. Under this consignment agreement, the one dated October of
2 2009, was Mallett able to sell the vases?

3 A. No.

4 MS. GRISWOLD: I ask Ms. Meister to please pull up
5 Government Exhibit 112.

6 BY MS. GRISWOLD:

7 Q. Do you see that in front of you?

8 A. I do.

9 Q. Do you recognize this consignment agreement dated October 7
10 of 2010, about a year later?

11 A. I see it, yes.

12 Q. Do you see the vases on this consignment agreement?

13 A. Item number 3.

14 Q. For \$725,000?

15 A. Yes, indeed.

16 Q. The consignor here on Government Exhibit 112 is AB&T
17 instead of Mr. Randall. Do you see that?

18 A. I do.

19 Q. At the time did you have an understanding of why the
20 consignor, that is, the entity or individual placing the items
21 with Mallett, had changed from Mr. Randall to AB&T?

22 A. I believe that AB&T did not want to consign through another
23 agent to us who was selling on their behalf.

24 Q. Were the vases sold under this agreement?

25 A. They were sold after this agreement expired.

Gck2oli3

Neville - Direct

1 Q. Now, when the vases came to Mallett, did they stay in New
2 York?

3 A. No, they did not.

4 Q. They were transferred to London?

5 A. They were transferred to our London gallery.

6 Q. Why were they transferred?

7 A. Because we believed that we would have a greater
8 opportunity of selling them to a European client.

9 Q. Did you tell Mr. Olins that they had been transferred to
10 London?

11 A. I believe I would have done, yes.

12 Q. When you say you believe you would have, do you recall one
13 way or the other whether you did?

14 A. I discussed it with Mr. Olins, yes.

15 MS. GRISWOLD: Ms. Meister, can you please pull up
16 Government Exhibit 504.

17 BY MS. GRISWOLD:

18 Q. Do you recognize the items depicted in this exhibit?

19 A. These are four carved giltwood wall brackets, yes.

20 Q. Were these -- was this an item or items that were also
21 placed on consignment with Mallett?

22 A. These were placed on consignment with Mallett.

23 Q. When did Mallett first obtain these wall brackets?

24 A. We first obtained the wall brackets back in the 1990s, I
25 believe, and sold them to a client who later reconsigned them

Gck2oli3

Neville - Direct

1 to us for resale.

2 Q. What was the name of that client?

3 A. Mr. Degardiola.

4 Q. Approximately when did Mr. Degardiola place them on
5 consignment with Mallett, at which time it was the second time
6 that Mallett had the wall brackets?

7 A. Early in 2011 would be my best guess, late 2010, early
8 2011.

9 Q. Once the items were consigned that second time with Mallett
10 in late 2010 or early 2011, was Mallett able to identify a
11 purchaser for the wallet brackets?

12 A. Mr. Olins had always expressed a huge interest in these
13 wall brackets as he had tried to acquire them unsuccessfully
14 the first time they were on the market. I offered them to
15 Mr. Olins when they came back to us because he had said these
16 were one of the most important things he had not been able to
17 acquire.

18 Q. When were those communications with Mr. Olins when you
19 offered them?

20 A. In early 2011.

21 Q. And how are you able to place those conversations in time
22 in early 2011?

23 A. That was when the brackets came to us, and I had said to
24 Mr. Olins that I would like to be able to offer them to him
25 before we put them on public display. Unfortunately he was

Gck2oli3

Neville - Direct

1 unable to come in when I was in the gallery and had to go to an
2 exhibition in Florida during February of 2011, and therefore we
3 had a meeting to view these wall brackets in late February,
4 after my return.

5 MS. GRISWOLD: Ms. Meister, can you please pull up
6 Government Exhibit 118.

7 BY MS. GRISWOLD:

8 Q. Do you see that e-mail in front of you, Mr. Neville?

9 A. I do see the e-mail.

10 Q. This is an e-mail chain dated February 7, 2011, between you
11 and Mr. Olins.

12 Do you recall this e-mail chain?

13 A. Yes, I do.

14 Q. In the first e-mail in the chain, on the page with the
15 Bates stamp ending in 3621, do you see that in front of you?

16 A. I do, yes.

17 Q. There is reference in your e-mail to Mr. Olins, at 4:36
18 p.m., that you are stuck in Florida for the Palm Beach Fair.

19 Is that the Florida show that you were talking about
20 earlier you testified about?

21 A. Yes, indeed, it is.

22 Q. Did you offer the wall brackets, to show them to anyone
23 besides Mr. Olins at this time?

24 A. No.

25 Q. Did there come a time when you did in fact meet with

Gck2oli3

Neville - Direct

1 Mr. Olins to discuss the wall brackets and have him observe
2 them?

3 A. On my return from Florida, we did meet to discuss the wall
4 brackets in the Mallett Gallery on Madison Avenue.

5 Q. Were the brackets there at the time of your meeting?

6 A. The brackets were hanging in our private showroom, which we
7 were able to close off, so they were.

8 Q. Was anyone else present for that meeting?

9 A. Nobody else was present, no.

10 Q. At that meeting did you reach an agreement with Mr. Olins
11 for the purchase the wall brackets?

12 A. Yes, we did.

13 Q. And what was the agreed-upon purchase price?

14 A. The agreed-upon purchase price was \$695,000.

15 Q. Did you agree on when Mr. Olins would pay?

16 A. No.

17 Q. Now, at the time you knew he had a debt with AB&T, correct?

18 A. Correct.

19 Q. In light of that, why did you agree to sell these brackets
20 to Mr. Olins?

21 A. I understood that Mr. Olins' collection was worth well in
22 excess of the debt that he owed to the bank and, therefore, was
23 happy to wait until the debt had been paid before receiving
24 money on the wall brackets.

25 MS. GRISWOLD: Ms. Meister, can you please pull up

Gck2oli3

Neville - Direct

1 Government Exhibit 101.

2 BY MS. GRISWOLD:

3 Q. Do you see that document in front of you, an March 8, 2011,
4 invoice?

5 A. Yes, I do.

6 Q. Is this an invoice for the wall brackets that are depicted
7 in Government Exhibit 504 that we just looked at?

8 A. Yes, it is.

9 Q. This invoice has a date of March 8, 2011. What prompted
10 the preparation of this invoice?

11 A. A request from the London office to process the invoice so
12 that it could be counted in the first quarter's figures of that
13 year.

14 Q. Did you have any communications with Mr. Olins about
15 actually issuing and sending the invoice?

16 A. No.

17 Q. So the last time that you had spoken to him about the wall
18 brackets was in February, when you met with him at Mallett?

19 A. Yes.

20 MS. GRISWOLD: Ms. Meister, could you please pull up
21 Government Exhibit 102.

22 Q. If you want to turn to this in your binder, this is a
23 several-page letter with multiple attachments.

24 MR. DeVITA: I'm sorry. What exhibit are we on?

25 MS. GRISWOLD: 102, August 9, 2011, letter with four

Gck2oli3

Neville - Direct

1 attachments.

2 MR. DeVITA: Thank you.

3 BY MS. GRISWOLD:

4 Q. Now, this letter is addressed to Mallett at the Madison
5 Avenue gallery. Are you familiar with this document?

6 A. Yes, I am.

7 (Continued on next page)

GCKJOLI4

Neville - direct

1 Q. Did you receive this document in or about August of 2011?

2 A. Yes, indeed.

3 Q. When you received it, did you read it in its entirety?

4 A. I read this document, yes.

5 Q. After reading it, what was your understanding of what it
6 meant for Mallett in terms of the items in Mr. Olins'
7 collection?

8 A. That we would not be allowed to sell them because they were
9 under lien from the SEC.

10 MR. DeVITA: Sorry, your Honor, I can't hear the
11 witness.

12 A. We would not be allowed to sell them because they were
13 under lien from the SEC.

14 BY MS. GRISWOLD:

15 Q. At that time, in August of 2011, did you understand that
16 lien to include the vases?

17 A. I did.

18 Q. After initially receiving this document, what did you do,
19 if anything, with it?

20 A. I sent it to our lawyers.

21 Q. Without telling me what you may have discussed with your
22 attorneys, how, if at all, did your understanding of what this
23 agreement meant change after consulting with them?

24 A. After that date, our lawyers explained to us that the
25 pieces from the collection of Mr. Olins' that were in London

GCKJOLI4

Neville - direct

1 were not included in this lien.

2 Q. So items that were physically located in London were not
3 barred by this lien, by the SEC restraining notice?

4 A. That was the advice we received.

5 Q. However, the vases were still part of the collection that
6 was secured by the AB&T loan, correct?

7 A. Correct.

8 Q. And so you still needed to communicate with Mr. Rusco in
9 order to sell the vases?

10 A. Correct.

11 Q. Mr. Neville, did there come a time in 2012 you learned a
12 client of Mallett located in the U.K. had a strong interest in
13 purchasing the vases?

14 A. Yes.

15 Q. Who was that Mallett client?

16 A. The Sheikh of Qatar.

17 Q. Was the Sheikh of Qatar your personal client or the client
18 of someone else at Mallett?

19 A. He was not my client. He was someone else's client.

20 Q. Who was that?

21 A. Mr. Richard Cave.

22 Q. Was Mr. Cave based in New York or based in London?

23 A. He was based in London.

24 Q. Approximately when in 2012 did you learn the Sheikh was
25 interested in the vases?

GCKJOLI4

Neville - direct

1 A. Early in 2012, January.

2 Q. How were you able to place that in time?

3 A. The vases were taken from us and placed with Sotheby's for
4 sale and published in their catalog for a January sale. This
5 sale was canceled by Sotheby's and the vases then returned to
6 us after our request to Mr. Rusco.

7 Q. So at the time that you learned of the Sheikh's interest,
8 Mallett did not actually have possession of the vases. Is that
9 right?

10 A. We did not.

11 Q. Once you learned that the Sheikh was seriously interested
12 in the vases, did you communicate this information to Mr.
13 Olins?

14 A. Yes, I did.

15 Q. When?

16 A. During this time, early January and February, I
17 communicated with Mr. Olins about trying to get the vases back
18 from Sotheby's because we had a client who was asking for them
19 so that he might be able to purchase them.

20 Q. Did you ask the defendant for his assistance in getting the
21 vases back from Sotheby's?

22 A. Yes, I did.

23 Q. How did the defendant respond?

24 A. That he would contact Mr. Rusco and ask for the vases to be
25 returned to us.

GCKJOLI4

Neville - direct

1 Q. What else, if anything, did you tell the defendant?

2 A. We had discussions at this time about the possibility of
3 Mallett buying outright from the receiver items from the estate
4 so that we might be able to sell them directly to our clients.
5 Mr. Olins was in agreement with that request.

6 Q. And that request being that Mallett would buy them
7 outright?

8 A. Correct.

9 Q. At this time, January-February of 2012, what was your
10 understanding of how much the Sheikh was willing to pay for the
11 vases?

12 A. I understood that it would be in the region of somewhere
13 around a million dollars.

14 Q. And again in January and February 2012, in your
15 communications with Mr. Olins, did you relay that information
16 to Mr. Olins?

17 A. I relayed the information that the client would be prepared
18 to pay a full price, greatly in excess of the estimate that
19 Sotheby's had printed.

20 Q. Did you and Mr. Olins discuss what would happen if Mallett
21 was successful in purchasing the vases outright?

22 A. Yes.

23 Q. Describe those communications.

24 A. We had a number of discussions about the possibility of
25 buying the vases outright particularly because this client had

GCKJOLI4

Neville - direct

1 suggested such strong interest.

2 Mr. Olins was unhappy about the concept of Mallett
3 would take all the additional profit; and, therefore, he
4 proposed that if we were successful in selling them with a high
5 overage, he should participate in that overage.

6 Q. When you say "overage," what are you talking about?

7 A. I am talking about the difference and the profit between
8 the sum of money which we were able to acquire them for from
9 the bank and the sum of money we would sell them for to our
10 client.

11 Q. When you say Mr. Olins said he should participate, what do
12 you mean by that?

13 A. That a share of the overage would go to Mr. Olins.

14 Q. Did your discussions discuss whether that share would be in
15 cash or otherwise?

16 A. His suggestion was that it would become part of the debt
17 that he owed us on the wall brackets and pay down that debt.

18 Q. After these discussions with Mr. Olins, did you, in fact,
19 speak with Mr. Rusco regarding purchasing the vases?

20 A. I did.

21 Q. Approximately when, when did you first talk to him?

22 A. In February 2012.

23 Q. What did you tell Mr. Rusco in February of 2012?

24 A. I told him that we would be interested in purchasing the
25 vases, but that their price had been compromised by the

GCKJOLI4

Neville - direct

1 publication of their value as an estimate at the Sotheby's
2 Auction House and also by the fact that we had discovered a
3 fairly considerable restoration in the vases; and, therefore, I
4 did not believe that they would be able to sell well for much
5 more than between 5 and 600,000, which was the published
6 estimates.

7 Q. Was that accurate, that you did not believe they would be
8 able to be sold for more than --

9 A. No, it was not accurate, in that we had a client who had
10 expressed an interest at a greater sum.

11 MS. GRISWOLD: Ms. Meister, would you please pull up
12 Government Exhibit 115.

13 Q. Are you familiar with this document in front of you,
14 Mr. Neville?

15 A. Thank you. Yes, I am.

16 Q. What is this document?

17 A. This is a document I dictated following the conversation
18 with Greg Rusco and noting my statements to him about the price
19 of the --

20 MR. DeVITA: What exhibit?

21 MS. GRISWOLD: 115.

22 Q. This says RAO HN conversation with Greg Rusco?

23 A. Correct.

24 Q. Your recollection is this is a conversation between you and
25 Mr. Rusco?

GCKJOLI4

Neville - direct

1 A. This is a conversation I had with Mr. Rusco and I believe
2 that Mr. Olins was on a third-party line at that time.

3 Q. Are you certain about that?

4 A. I am not certain about that, no.

5 Q. How long after that conversation were these notes dictated?

6 A. Immediately after.

7 Q. Did you type them yourself or have someone else type them?

8 A. No, I did not type them myself.

9 Q. In the second bullet, the publication of the vases and
10 further withdrawal from the sale makes them unsalable at their
11 consignment price but rather at a lower sum.

12 HN, that is you?

13 A. Yes.

14 Q. You suggest returning 500 and 550 to the bank?

15 A. Correct.

16 Q. So these notes reflect that you told Mr. Rusco that the
17 vases would be unsalable at a sum much above between 500 and
18 550?

19 A. I believe so, yes.

20 THE COURT: Who came up with the estimate that
21 Christie's published or Sotheby's?

22 THE WITNESS: Their experts. When the auction houses
23 have items on consignment, each department's experts look at
24 the item and then judge the market by that price, or judge the
25 price by the market. I apologize.

GCKJOLI4

Neville - direct

1 THE COURT: All right. And so these items were
2 consigned -- was it Sotheby's or Christie's?

3 THE WITNESS: Sotheby's, your Honor.

4 THE COURT: They were consigned by Mallett?

5 THE WITNESS: No, they were not. They were consigned
6 by Mr. Rusco through Mr. Glen Randal to Sotheby's for sale.

7 THE COURT: I see. And the consignor; namely, Mr.
8 Rusco or Mr. Randall, wouldn't play any role in coming up with
9 the estimates?

10 THE WITNESS: No.

11 THE COURT: Okay. Thank you.

12 MS. GRISWOLD: May I proceed?

13 THE COURT: You may.

14 BY MS. GRISWOLD:

15 Q. After this conversation with Mr. Rusco, did you speak to
16 Mr. Olins?

17 A. Yes.

18 Q. How long after the call with Mr. Rusco?

19 A. Within the day.

20 Q. Describe that call.

21 A. Mr. Olins called me and said that he thought that
22 conversation with Mr. Rusco had gone well and that I would now
23 wait to see if the bank were prepared to sell the vases
24 directly to us.

25 Q. What did you understand Mr. Olins to mean when he said the

GCKJOLI4

Neville - direct

1 call had gone well?

2 A. That Mr. Rusco had listened to my arguments about the value
3 of the vases considering their published price and their
4 condition and had understood my argument.

5 Q. Your argument that you would not be able to sell them for
6 much above the Sotheby's estimate?

7 A. 500 to 550, correct, yes.

8 Q. Did Mallett ultimately sell the vases to the Sheikh?

9 A. Yes.

10 Q. When did that happen?

11 A. April 2012.

12 Q. How much did Mallett sell the vases for?

13 A. \$1.3 million.

14 Q. Prior to this April sale, did you tell Mr. Rusco or anyone
15 at AB&T that the sale was going to take place?

16 A. No.

17 Q. Did you get approval from the SEC?

18 A. No.

19 Q. Did you get approval from any court?

20 A. No.

21 Q. Did you tell the defendant prior to consummating that sale
22 in April of 2012?

23 A. No.

24 MS. GRISWOLD: Ms. Meister, please pull up Government
25 Exhibit 105.

GCKJOLI4

Neville - direct

1 Q. This is a several page e-mail. You may want to turn to it
2 in your binder. Just let me know when you're there.

3 THE WITNESS: Your Honor, excuse me. I wonder if I
4 might ask my briefcase has my glasses, my reading glasses?

5 THE COURT: Sure. We'll get that for you.

6 THE WITNESS: I apologize.

7 MS. GRISWOLD: May I approach, your Honor?

8 THE COURT: You may.

9 MS. GRISWOLD: Thank you.

10 THE WITNESS: They're in my coat. Sorry.

11 (Pause)

12 BY MS. GRISWOLD:

13 Q. Are you able to see the document?

14 A. Yes, I do. Thank you.

15 Q. This is a six page e-mail chain April 7 to April 12, 2012.

16 Are you familiar with this e-mail?

17 A. I am.

18 Q. First to identify the individuals on this e-mail, are these
19 individuals in Mallett's London office?

20 A. Yes.

21 Q. It is from Khalil Ishaq to Michael Smyth-Osbourne?

22 A. Indeed.

23 Q. This e-mail indicates that monies received for the vases
24 are in the amount of 844,994 British pounds. I am looking
25 specifically at the page ending in 2774.

GCKJOLI4

Neville - direct

1 A. I see that.

2 Q. Who was Party 5?

3 A. I believe it would have been the Sheikh.

4 Q. I want to focus your attention on the sentence on the page
5 ending in 2773.

6 A. Yes.

7 Q. Where Mr. Smyth-Osbourne instructs you to "go into that"
8 with Olins' bank and Olins about how much we have to pay the
9 bank and how much we keep to pay off Olins' debt on the --

10 A. Yes.

11 Q. Are the wall lights reference to wall lights depicted in
12 Government 504 or something else?

13 A. They are the wall brackets.

14 Q. When you received this e-mail, what did you understand
15 Mr. Smyth-Osbourne to mean by how much we keep to pay off
16 Olins' debt on the wall lights?

17 A. I understood this referred to Mr. Degardiola and how much
18 we were able to give to Mr. Degardiola for the wall lights
19 which Mr. Olins had agreed to purchase.

20 Q. So to pay down Mr. Olins debt on those wall brackets?

21 A. Correct.

22 Q. By this time had you spoken to Mr. Olins about applying the
23 money from his portion of the -- any money from the sale of the
24 vases to his wall bracket debt?

25 A. Yes, I had.

GCKJOLI4

Neville - direct

1 MS. GRISWOLD: Ms. Meister, please pull up Government
2 Exhibit 3.

3 Q. This is a May 17th, 2012 letter addressed to you from AB&T.
4 Are you familiar with this letter?

5 A. Yes.

6 Q. Did you receive it in May 2012?

7 A. Yes.

8 Q. Did you read it at the time?

9 A. Yes.

10 Q. What was your understanding of what it meant?

11 A. I understood that it meant that Mr. Rusco, the banker at
12 AB&T, had been appointed receiver for the court in respect of
13 Mr. Olins' estate.

14 Q. What did that mean for the pieces in Mr. Olins' estate? In
15 terms of Mallett's ability to sell them?

16 A. That we would need court permission to do so.

17 Q. I ask you to turn to Exhibit A of this document.

18 MS. GRISWOLD: Ms. Meister, will you put it up on the
19 screen in front you.

20 THE WITNESS: Yes.

21 Q. Are the vases on this list?

22 A. They are on the list, yes.

23 MS. GRISWOLD: I ask Ms. Meister to highlight them,
24 please.

25 Q. So you received this document in May of 2012, and the vases

GCKJOLI4

Neville - direct

1 are on the list, and you've testified that you understood at
2 this point that court approval would be required to sell any
3 items on this list, correct?

4 A. Yes.

5 Q. But you had already sold the vases, right?

6 A. Yes.

7 Q. So at this point did you call Mr. Rusco and tell him that?

8 A. No.

9 Q. Did you notify the court?

10 A. No.

11 Q. Did you call the defendant?

12 A. Yes, I did call the defendant and I asked if we were going
13 to receive the letter that we had been promised giving us
14 permission to buy the vases because I had received this
15 document from the bank.

16 Q. What happened next?

17 A. Mr. Rusco telephoned me to say that he needed a letter from
18 me in support of his application for the purchase of the vases
19 by Mallett.

20 Q. And in that phone conversation, did you tell Mr. Rusco that
21 you already sold the vases?

22 A. No, I did not.

23 Q. In that conversation, did you tell Mr. Rusco that you had a
24 buyer willing to pay more than a million dollars for the vases?

25 A. No, I did not.

GCKJOLI4

Neville - direct

1 Q. What price did you discuss with Mr. Rusco in May of 2012?

2 A. I don't remember discussing a price with Mr. Rusco at that
3 time. Earlier I had received a telephone call outlining that
4 Mallett would be able to buy the vases for \$540,000 but that we
5 would have to wait and receive written permission in order to
6 ratify that purchase.

7 Q. Fair to say that you had communications with Mr. Rusco
8 about paying \$540,000 for the vases?

9 A. Correct.

10 Q. Also fair to say that you led Mr. Rusco to believe that
11 Mallett's buyer was willing to pay in the range of \$600,000?

12 A. In the range of between 600 and \$700,000, correct.

13 Q. Was that true?

14 A. No.

15 MS. GRISWOLD: Ms. Meister, would you put up
16 Government Exhibit 106, please.

17 Q. Mr. Neville, did you communicate with Mr. Olins regarding
18 obtaining approving from Mr. Rusco and the court to sell, to
19 get the vases out of receivership for \$540,000?

20 A. Yes.

21 Q. What did you understand?

22 Did you understand whether or not Mr. Olins was in
23 support of this request?

24 A. I believe Mr. Olins was in support of this request.

25 Q. What, if any, steps did Mr. Olins take to assist in getting

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Neville - direct

1 the vases out of the receiver estate for \$540,000?

2 A. I had been asking Mr. Olins on a number of occasions prior
3 to this e-mail of May 21st if we were going to obtain the
4 written permission soon and was always assured that we should
5 obtain it soon.

6 However, as it was not forthcoming, Mr. Olins
7 telephoned to say, as reported hereby Anna, my assistant, that
8 Mr. Olins' lawyer was discussing with Greg Rusco and the bank
9 the sale of the vases to Mallett.

10 Q. Just break that down a little bit.

11 In this e-mail, dated May 21, 2012, Anna Gutierrez,
12 was she your assistant?

13 A. Yes.

14 Q. This e-mail indicates Robert called to say his buyer is
15 putting pressure on Greg Rusco and the bank to allow the sale
16 of the vases to go through. He asked we hold off on any
17 letters or further action until tomorrow.

18 What did you understand the reference to holding off
19 on any letters or further action to mean when you received this
20 e-mail?

21 A. That I should not communicate directly with Mr. Rusco.

22 Q. Did you ultimately, however, send one or more letters to
23 Mr. Rusco?

24 A. I did.

25 MS. GRISWOLD: Ms. Meister, would you please pull up

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Neville - direct

1 Government Exhibit 4 again and turn to Exhibit A of that
2 exhibit. I believe it is Page 7 of 10.

3 Q. Do you see that in front of you, Mr. Neville?

4 A. I do.

5 MR. DeVITA: Where are you?

6 MS. GRISWOLD: We are on Exhibit 4, and within that
7 exhibit, Exhibit A.

8 BY MS. GRISWOLD:

9 Q. This is a letter from you dated, I believe, May 31st of
10 2012. Is that your signature? Did you send that letter?

11 A. That is my signature, yes.

12 Q. When you sent this letter, did you understand that the
13 letter was for the purpose of obtaining approval in order to
14 get the vases out of the receiver, approval from the court?

15 A. I did.

16 Q. Was there, in fact, a prior letter in which you described
17 Mallett as acting as a broker on the transaction?

18 A. Yes.

19 Q. And was that true?

20 A. No.

21 Q. Mr. Neville, at any point in May of 2012 or before, did you
22 tell Mr. Rusco that you had a buyer that either paid or was
23 going to pay more than twice the sum of 540,000 for the vases?

24 A. No.

25 Q. How did you learn that the sale of the vases was approved

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Neville - direct

1 by the court?

2 A. Mallett received a letter from the court, agreeing to the
3 sale.

4 Q. Once you received that information, did you communicate
5 with the defendant?

6 A. Yes.

7 Q. Can you describe those communications.

8 A. I telephoned Mr. Olins to say that we had received written
9 permission and that we would be prepared to extend to him a
10 credit of \$460,000 against his purchase of the wall brackets.

11 Q. How did you arrive at the amount of 460,000? Did you come
12 up with that amount?

13 A. Yes, I did personally because Mr. Olins had always
14 expressed the idea that the vases were worth around a million
15 dollars. I understood that that was possibly his purchase
16 price; and, therefore, if we were paying the bank \$540,000 in
17 order to reach the million, he would be receiving 460.

18 Q. What was his response when you indicated that you were
19 willing to offset \$460,000 of the wall bracket debt?

20 A. That he was unable to accept the \$460,000 entirely as
21 credit, but that he needed some of that as cash in order that
22 he could put down a deposit on an apartment that he was looking
23 to acquire in Madrid, Spain.

24 Q. Did you agree to pay a portion in cash?

25 A. Yes, we did.

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Neville - direct

1 THE COURT: Can I ask, during this time who had
2 possession of the wall brackets? Did Mallett still or were
3 they in Mr. Olins' possession?

4 THE WITNESS: Mallett had possession of the wall
5 brackets, your Honor.

6 THE COURT: Was the understanding or the agreement
7 that you would retain possession of the wall brackets until the
8 amount that he agreed to pay was paid off, at which point he
9 would take possession of them?

10 THE WITNESS: Indeed, your Honor, yes. The wall
11 brackets did not belong to us. They belonged to
12 Mr. Degardiola. We were acting as guardian or custodian for
13 them and we would not release them until they had been fully
14 paid for.

15 THE COURT: Did you consider the 600 some-odd thousand
16 dollars, I think there was a document that we saw indicating
17 the sale of --

18 THE WITNESS: Yes, indeed.

19 THE COURT: -- the wall brackets for that amount?

20 THE WITNESS: Yes.

21 THE COURT: Did you consider that to be a binding
22 agreement that the defendant owed that amount to Mallett?

23 THE WITNESS: Yes.

24 THE COURT: And Mallett would pay whatever amount was
25 owed to Mr. --

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Neville - direct

1 THE WITNESS: Degardiola.

2 THE COURT: Thank you.

3 BY MS. GRISWOLD:

4 Q. For the cash portion, the \$160,000 that you agreed to pay
5 Mr. Olins in cash, did he indicate to what account or entity he
6 wanted that money sent?

7 A. Yes.

8 Q. What was that?

9 A. It was to a bank account in the Isle of Man.

10 Q. Do you recall the name on that account?

11 A. Wychwood. I don't recall which wood trust or which wood.

12 Q. Did you personally receive any money from the vase
13 transaction, Mr. Neville?

14 A. No.

15 MS. GRISWOLD: Ms. Meister, can you pull up Government
16 Exhibit 108, please.

17 Q. Mr. Neville, are you familiar with the letter in front of
18 you, Government Exhibit 108?

19 A. Yes, indeed.

20 Q. Who prepared this letter?

21 A. This letter was prepared at Mallett's in the office.

22 Q. The letter is dated July 23rd of 2013. Did you have this
23 prepared at your direction?

24 A. The Accounts & Finance Department in London asked me to
25 prepare this letter in order that the finance department had

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Neville - direct

1 written confirmation of Mr. Olins' activities in 2012.

2 Q. In the letter the defendant indicates that he paid \$300,000
3 toward the purchase of the wall brackets. How did the
4 defendant pay that \$300,000?

5 A. He paid that \$300,000 as part of the sum allocated to him
6 from the overage on the sale of the vases.

7 Q. Did you see the defendant sign this letter?

8 A. Yes, I did.

9 Q. Did he sign it on or about July 23, 2013?

10 A. Yes.

11 Q. I turn your attention to Government Exhibit 500.

12 Are you familiar with the item depicted in Government
13 Exhibit 500?

14 A. Yes.

15 Q. What is that?

16 A. It is one of a pair of Olivo candelabra.

17 Q. How many were there total?

18 A. Two.

19 Q. Were they the brass part of Mr. Olins' collection?

20 A. Yes.

21 MS. GRISWOLD: I ask Ms. Meister to turn back to
22 Exhibit 3, Attachment A, which is the receiver order.

23 Q. Are the candelabra listed on Exhibit A as part of the
24 receiver estate?

25 A. Yes.

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Neville - direct

1 Q. How far down?

2 MS. GRISWOLD: I ask Ms. Meister to please highlight
3 them.

4 A. No. 5.

5 Q. No. 5? So by May 2012 the brass were governed by the
6 receiver order?

7 A. Yes.

8 Q. Were the items, were the candelabra and item on consignment
9 with Mallett in 2012?

10 A. Yes.

11 Q. Was Mallett able to successfully sell them in 2012?

12 A. No.

13 Q. Had there come a time you were introduced to an individual
14 named Bruce Jaeger?

15 A. Yes.

16 Q. Mr. Jaeger was an acquaintance of Mr. Olins?

17 A. I believe so, yes.

18 Q. What were the circumstances under which you met Mr. Jaeger
19 first?

20 A. Mr. Jaeger visited the gallery, and I was told by Mr. Olins
21 on the telephone that he would do so because he was interested
22 in the possibility of acquiring some pieces from the estate.

23 Q. Approximately when was that meeting?

24 A. Autumn or fall of 2012.

25 Q. Did there come a subsequent time you learned Mr. Jaeger had

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Neville - direct

1 actually purchased the candelabra from the receiver?

2 A. Yes.

3 Q. Approximately when did you learn that?

4 A. Late in 2012.

5 Q. How did you learn it?

6 A. Mr. Rusco called me to say that he had sold the candelabra,
7 but not to be concerned as the purchaser was going to leave
8 them at Mallett for resale.

9 Q. After that time did Mallett, in fact, obtain the candelabra
10 again on consignment for resale?

11 A. From Mr. Jaeger, yes.

12 Q. Was there an agreement with Mr. Jaeger regarding the
13 consignment with Mallett?

14 A. Yes.

15 Q. Can you describe that agreement.

16 A. The agreement was to return Mr. Jaeger \$950,000.

17 Q. Were there other aspects to the agreement?

18 A. Originally the agreement was to last for six months.

19 Q. What was Mallett's compensation or commission on the
20 consignment agreement?

21 A. We would take 20 percent.

22 Q. Did you negotiate that agreement with Mr. Jaeger?

23 A. Yes.

24 Q. In person or over the phone?

25 A. In person.

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Neville - direct

1 Q. Where?

2 A. In the front showrooms at Mallett.

3 Q. Was anyone else present when you negotiated that agreement?

4 A. Mr. Olins was present.

5 Q. When was the candelabra ultimately sold by Mallett?

6 A. The year following, late in the year following,
7 October-November.

8 Q. 2013?

9 A. 2013.

10 Q. For how much was it sold?

11 A. It was sold for cash and goods. I believe the exact sum
12 that was booked was 1.4 million.

13 Q. How much of that was cash?

14 A. 800,000.

15 Q. What did Mallett get out of the transaction?

16 A. We got the goods.

17 Q. And the goods making up the difference between 800,000 and
18 the total price?

19 A. 1.4, correct.

20 THE COURT: Ms. Griswold, would this be a good time to
21 take a five-minute break?

22 MS. GRISWOLD: Sure, that would be good. I don't have
23 too much more, maybe 15 minutes.

24 THE COURT: Thanks for letting me know. We'll take a
25 five-minute break and pick up where we left off. Thank you.

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Neville - direct

1 (Recess)

2 THE COURT: You may be seated.

3 Mr. Neville, you're still under oath. Direct
4 examination to be continued.

5 BY MS. GRISWOLD:

6 Q. Mr. Neville, you had indicated that the Mallett sold the
7 candelabra in 2013 for 800,000 cash and then some goods. Is
8 that correct?

9 A. Correct.

10 Q. I believe you said, you testified you thought the total
11 price was 1.4 million. Are you certain about that?

12 A. No, I am not certain about that. I am certain about the
13 cash, but not the goods.

14 Q. Did you personally get anything from the sale of the brass?
15 Did you get any money or any property or anything of
16 any sort?

17 A. No.

18 Q. How much was credited to Mr. Olins from the resale of the
19 Dragon candelabra?

20 A. I believe it was \$197,000.

21 Q. Whose decision was that, that he would get a portion?

22 A. I believe it was an agreement between Mr. Jaeger and Mr.
23 Olins. The exact amount I wasn't certain of until I was
24 informed of the quantity by Mr. Olins.

25 Q. Who was it that told you it is 197 to be applied to Mr.

GCKJOLI4

Neville - direct

1 Olins?

2 A. Mr. Olins.

3 Q. How was that given to Mr. Olins in cash or in credit?

4 A. As a credit against the wall brackets.

5 Q. Was there any discussion about whether that would be
6 received in cash or as a credit?

7 A. No.

8 Q. I am going to turn to a few more questions about the wall
9 brackets. You testified earlier about the defendant's purchase
10 of the wall brackets for 695,000. Do you recall that?

11 A. Yes.

12 Q. That was the meeting in February of 2011?

13 A. Correct.

14 MS. GRISWOLD: I ask Ms. Meister to you pull up
15 Government Exhibit 101 again.

16 Q. Do you recall this exhibit, the invoice showing the name of
17 Mr. Olins?

18 A. Yes.

19 Q. I ask you to look at Government Exhibits 109 and 1010.
20 They are a June 4, 2014 e-mail with attachments and a June 30,
21 2014 e-mail with attachments?

22 MR. DeVITA: Sorry. What?

23 MS. GRISWOLD: Government Exhibit 109 and 110.

24 Q. They're both e-mails from Anna Gutierrez to you?

25 A. Yes.

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Neville - direct

1 Q. Do you recall these e-mails and attachments?

2 A. Yes, I do.

3 Q. Let's start with Government Exhibit 110.

4 THE COURT: Can I go back to the wall brackets. I am
5 not sure this is relevant, but I am sort of hung up on it
6 because I find it interesting. The transaction involving the
7 wall brackets, you testified the agreement was in or about
8 February and March of 2011. Is that correct?

9 THE WITNESS: Yes, your Honor.

10 THE COURT: And when you made that agreement, was
11 there any understanding as to how quickly Mr. Olins would pay
12 down the money, the purchase money, the debt?

13 THE WITNESS: No, your Honor.

14 THE COURT: But the understanding was until he did,
15 they would remain in possession of Mallett?

16 THE WITNESS: Yes, your Honor.

17 THE COURT: So, in theory, could that have been
18 indefinite?

19 THE WITNESS: In theory, your Honor, but I am not sure
20 for some long a time, yes.

21 THE COURT: Is that standard practice in the industry?

22 THE WITNESS: It can be.

23 THE COURT: All right. Go ahead.

24 BY MS. GRISWOLD:

25 Q. Government Exhibit 110 is the June 4th, 2014 e-mail. Do

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Neville - direct

1 you see that?

2 A. Yes, I do.

3 Q. Attached to that is an invoice, dated March 8th, 2011, the
4 second page of the attachment.

5 MS. GRISWOLD: Would you display that, please, Ms.
6 Meister.

7 Q. This is an invoice for the wall brackets made out to
8 Mr. Robert Olins. Is this the same invoice as the one that we
9 looked at earlier, Government Exhibit 101? I ask you to
10 compare those two.

11 A. Yes.

12 Q. Turning to Government Exhibit 109, which is the June 30th
13 e-mail from Ms. Gutierrez to you, the attachments to this
14 e-mail include an invoice ending in Bates No. 3506. Do you see
15 that in front of you?

16 A. I do, indeed.

17 Q. And this invoice is also dated March 8th, 2011. It is also
18 for the wall brackets at a price of 695,000 but it is in the
19 name of Spirit Bear Limited as opposed to Mr. Olins. Do you
20 see that?

21 A. Yes, I do.

22 Q. Can you explain how between June 4th of 2014 and June 30th
23 of 2014 the invoice for the wall brackets came to go from Mr.
24 Olins' name to Spirit Bear's name?

25 A. Mr. Olins asked us to reissue the invoice to Spirit Bear

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Neville - direct

1 Limited.

2 Q. When you say "us," who did he ask?

3 A. He asked myself and Anna.

4 Q. Did you agree to change the invoice?

5 A. I confirmed with London and the finance department and
6 agreed to change the invoice.

7 Q. But keep the date of March 8th, 2011?

8 A. Correct.

9 Q. Did Mr. Olins indicate why he wanted you to change the name
10 on the invoice from his name to Spirit Bear's name?

11 A. He said that if we were able to do this, we would be able
12 to receive the outstanding balance on the monies owed to us for
13 the invoice in the sum of about \$25,000 a month.

14 Q. And the "we" being Mallett, Mallett would be able to
15 receive the outstanding amount?

16 A. Correct.

17 Q. Once you made this change, did Mallett, in fact, receive
18 additional funds towards the purchase price of the wall
19 brackets?

20 A. We received one payment of I believe \$25,000.

21 Q. What was your understanding, if any of what Spirit Bear
22 was --

23 A. I did not have any understanding exactly what it was.

24 Q. Did you have any discussions at any time with Mr. Olins
25 about whether he was purchasing the wall brackets for himself

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Neville - direct

1 or for some other entity or purpose?

2 A. It was always my understanding that he was purchasing them
3 for himself because he and I had had a number of discussions
4 over a long period about the possibility of forming a great
5 collection of carved English guild-wood.

6 MR. DeVITA: I will object because Ms. Griswold asked
7 whether he had a conversation with Mr. Olins, and the witness
8 is testifying what his understanding was, not what the
9 conversation was.

10 THE COURT: All right. Fair enough.

11 Did you have any conversations with Mr. Olins about
12 whether he was purchasing the wall brackets for himself or for
13 another entity or purpose?

14 THE WITNESS: I cannot recall that exact conversation,
15 your Honor, no.

16 THE COURT: Okay. To the extent that you shared your
17 understanding --

18 THE WITNESS: Yes.

19 THE COURT: -- what was your understanding based upon?

20 THE WITNESS: My understanding was based upon Mr.
21 Olins' desire to form a great collection of English carved
22 guild-wood furniture, of which these wall brackets would have
23 formed an important part.

24 THE COURT: So you did have conversations about his
25 desire to form such a collection?

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Neville - direct

1 THE WITNESS: Yes, indeed, your Honor.

2 THE COURT: Thank you.

3 BY MS. GRISWOLD:

4 Q. On that point, you testified earlier that Mr. Olins told
5 you that part of the reason why he wanted a portion of the
6 160,000 from the sale of the vases in cash related to a
7 potential apartment in Spain. Is that correct?

8 A. That is correct, yes.

9 Q. Did you have any conversations with Mr. Olins regarding
10 furnishing that apartment in Spain or items of antiques that he
11 may want to purchase for that apartment?

12 A. Yes, I did.

13 Q. Describe those.

14 A. Mr. Olins was excited about the potential of the apartment
15 in Spain because it had high ceilings and good walls on which
16 to be able to display his collection and also hang chandeliers.

17 Q. Did you or Mallett assist Mr. Olins in any way in locating
18 an apartment in Spain or furnishing an apartment in Spain?

19 A. Not locating, but he did ask if we knew anybody who could
20 help him in setting up an apartment in Spain, and we did have
21 the wife of one dealer with whom we did business, who dealt
22 with properties in Spain and put him in contact with her.

23 MS. GRISWOLD: Ms. Meister, please pull up Government
24 Exhibit 116.

25 Q. This is an August 10th, 2012 e-mail chain, approximately

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Neville - direct

1 two months after the vase transaction was approved. Are you
2 familiar with this e-mail, Mr. Neville?

3 A. Yes, indeed.

4 Q. This is an e-mail that begins from you to Mr. Olins,
5 subject line Plaza del Cordone. What was the purpose of this
6 e-mail?

7 A. This was, as I explained, our introduction to Rita Frayer,
8 who is the wife of a dealer with whom we did business, and to
9 her partner who could help Mr. Olins with his apartment.

10 Q. There is a reference in this e-mail in the second sentence,
11 you say she is at present in Belgium; and, therefore, if you
12 need this house installation to be worked on quickly, she has
13 an absolutely perfect partner in Madrid who has done this many
14 times for expats.

15 What did you mean by a house installation?

16 A. The words "house installation" would mean fitting out a
17 house with anything and everything. I can't be precise about
18 its meaning, as I wasn't aware of the exact space in Spain.

19 Q. Mr. Neville, you talked about the fact that you deceived
20 Mr. Rusco with respect to the vases?

21 A. Yes.

22 Q. Did you deceive the receiver in connection with other
23 pieces in Mr. Olins' collection?

24 A. Yes.

25 Q. Did you mislead Mr. Rusco about a pair of globes?

GCKJOLI4

Neville - direct

1 A. Yes.

2 MS. GRISWOLD: I ask Ms. Meister to pull up government
3 exhibit -- actually, we don't need the exhibit.

4 Q. What did you do to deceive Mr. Rusco with respect to the
5 globes?

6 A. I misstated the time of the sale, the location of the sale
7 and I misstated the price.

8 Q. What year are we talking about?

9 A. 2012.

10 Q. What did you tell Mr. Rusco about when the sale of the
11 globes took place?

12 A. I told Mr. Rusco the sale took place at a London affair in
13 the summer of 2012, when the sale actually took place at a
14 March exhibition the same year.

15 Q. In the spring of 2012?

16 A. In the spring of 2012.

17 Q. When you lied to Mr. Rusco about the globes, you understand
18 Mr. Rusco was working on behalf of AB&T, the bank?

19 A. I did.

20 Q. And you said this is in 2012, so you also understood that
21 he was the receiver at this time?

22 A. I did.

23 Q. In addition to lying to him about where they were sold and
24 when they were sold, did you also lie to Mr. Rusco about how
25 much they were sold for?

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Neville - direct

1 A. Yes, I misstated the price by over a hundred thousand
2 dollars, I think.

3 Q. Before you pleaded guilty in May of 2016, you disclosed
4 these lies about the globes to the government. Is that
5 correct?

6 A. Yes, I did.

7 Q. I will ask you a few questions about the time period before
8 the SEC restraining notice was sent to you in 2011. I ask you
9 about an item called a bull chandelier. Do I have that
10 correct?

11 A. You do have that correct.

12 MS. GRISWOLD: Can you bring back up Government
13 Exhibit 11, please.

14 Q. Is the bull chandelier on Government Exhibit 11?

15 A. Yes.

16 Q. Consigned to Mallett at a price of 1.6 million?

17 A. Correct.

18 Q. Did Mallett ultimately find a buyer for the bull
19 chandelier?

20 A. We did.

21 Q. You did?

22 A. Yes.

23 Q. How much cash did Mallett receive for the sale of the bull
24 chandelier?

25 A. It was in excess of a million. I cannot remember the exact

GCKJOLI4

Neville - direct

1 figure.

2 MS. GRISWOLD: Your Honor, may I approach?

3 THE COURT: You may.

4 (Pause)

5 BY MS. GRISWOLD:

6 Q. I put in front of you, Mr. Neville, a two page
7 screen-shot --

8 A. Yes.

9 Q. -- Government Exhibit 119. Do you see those two pages?

10 A. I do.

11 Q. Do you recognize what these are, what these depict?

12 A. Yes.

13 Q. Can you explain.

14 A. When we sold the bull chandelier, Mr. Olins was in a hurry
15 to receive the payment as quickly as possible. However, it was
16 over the Christmas period and, unfortunately, the client's
17 Swiss private office was closed.

18 Therefore, I pushed the client's agent to put some
19 money down as a show of good faith for the purchase, which is
20 why we received 145,000 separate from the balance of 1.305
21 million at a later date when the client's private office
22 reopened.

23 (Continued on next page)

Gck2oli5

Neville - Direct

1 Q. So just so we are clear, the second page of Government
2 Exhibit 119, that ends in Bates stamp 60, that is a screen shot
3 dated December 31 of 2010.

4 Is this from a Mallett internal system?

5 A. This is from a Mallett accounting system, yes.

6 Q. And it indicates, "Due to Mallett, 145,000," and that's
7 what you are describing being paid first?

8 A. Yes.

9 Q. For the boule chandelier?

10 A. Correct.

11 Q. And then the document ending in 61 is dated January 20,
12 2011, to Mallett, "paid to London directly \$1.305 million"?

13 A. Correct.

14 Q. And is this the entirety of the cash that was received from
15 Mallett for this boule chandelier transaction?

16 A. Yes. Yes, I believe so.

17 Q. I am going to show you what is marked as Defense Exhibit D,
18 it's a \$2.7 million invoice for the boule chandelier.

19 A. Yes.

20 Q. Did you direct this invoice to be put together?

21 A. No.

22 Q. Do you know where the \$2.7 million price comes from?

23 A. I believe so, yes.

24 Q. Can you explain?

25 A. We received goods as part of the purchase of the chandelier

Gck2oli5

Neville - Direct

1 as well as the cash. The goods we received were two giltwood
2 chandeliers, which the client had bought from us many years
3 previously. These were valued by our accounts department and
4 by the client's agent at the original purchase price of \$1.3
5 would be about right, \$1.3 million. However, when they came
6 in, we wrote them down considerably to a few hundred thousand
7 because, in the present market, giltwood chandeliers didn't
8 sell easily.

9 Q. When you reported the purchase price for the boule
10 chandelier to AB&T, did you disclose just the cash portion or
11 also the goods --

12 A. I --

13 Q. Let me just finish my question just so the court reporter
14 can get us both down.

15 Did you disclose just the cash portion or also the
16 goods that Mallett had taken back from the purchaser?

17 A. I disclosed the cash portion, and disclosed the fact that
18 we would take goods as our commission on the sale.

19 Q. Finally, I want to ask you about a set of wall lights.

20 Again, Government Exhibit 111, we see the wall lights.
21 Do you recall the wall lights?

22 A. Yes, I do.

23 Q. With a consignment price of \$1.75 million?

24 A. I see them.

25 Q. And again this is 2010, so before the receiver order?

Gck2oli5

Neville - Direct

1 A. Correct.

2 Q. Were the wall lights consigned directly by Mr. Olins or
3 through Glenn Randall?

4 A. Through Mr. Randall.

5 Q. And who did you deal with regarding the consignment of the
6 wall lights to Mallett?

7 A. With Mr. Randall.

8 Q. Did you have any discussions with Mr. Rusco regarding the
9 wall lights?

10 A. I do not remember doing so.

11 Q. Do you recall if Mallett had a buyer for the wall lights?

12 A. We did sell the wall lights.

13 Q. Do you recall how much they were sold for?

14 A. I don't exactly know.

15 Q. Did you discuss that sale with Mr. Olins?

16 A. I don't remember doing so. At this time I was discussing
17 the financial affairs with Mr. Randall, who was the agent.

18 Q. So your discussions regarding the wall lights, the best of
19 your recollection, took place with Mr. Randall?

20 A. Yes.

21 Q. So you are cooperating, you testified earlier, with the
22 government in the hopes of receiving leniency from the judge?

23 A. I understand that.

24 Q. And you pled guilty in May of 2016?

25 A. Yes, I did.

Gck2oli5

Neville - Direct

1 Q. What did you plead guilty to?

2 A. I pled guilty to five different charges.

3 Q. What were those charges?

4 A. They were conspiracy to obstruct justice and obstructing
5 justice; they were conspiracy to bank fraud and bank fraud; and
6 they were issuing false statements to the government.

7 Q. And what is your understanding of the maximum sentence you
8 could face for these crimes?

9 A. It is, on the top, 80 years.

10 Q. And you entered into a cooperation agreement with the
11 government?

12 A. I did.

13 MS. GRISWOLD: Very briefly, I am going to ask
14 Ms. Meister to put up 350112 on the screen.

15 BY MS. GRISWOLD:

16 Q. Is this your cooperation --

17 MS. GRISWOLD: And if you could please put up the
18 signature page.

19 Q. Is this your cooperation agreement with the government,
20 Mr. Neville?

21 A. Yes.

22 Q. And what is your understanding of what you have to do under
23 this agreement?

24 A. I have to tell the government and this court the truth
25 about the affairs about which I am questioned.

Gck2oli5

Neville - Direct

1 Q. Now, you did not tell the truth when you first met with the
2 government in the fall of 2015, is that correct?

3 A. That is correct.

4 Q. And you tried to tell the government that you had never had
5 any intention to mislead Mr. Rusco?

6 A. That is correct.

7 Q. And you also tried to tell the government that you hadn't
8 really sold the vases in April 2012 because it wasn't really a
9 final sale, is that correct?

10 A. That is correct, yes.

11 Q. And as a result of those lies to the government, what
12 happened?

13 A. I was charged with false representations to the government
14 and admitted to that crime.

15 Q. And if you lie today, what is your understanding of whether
16 the government could also prosecute you again for perjury?

17 A. I understand that I could be prosecuted for perjury and
18 that also my agreement outside here is null and void.

19 Q. Does the outcome of this hearing have any impact on what
20 your sentence will be as far as you understand?

21 A. As far as I understand, no.

22 MS. GRISWOLD: May I have one moment, your Honor?

23 (Counsel confer)

24 BY MS. GRISWOLD:

25 Q. Just one more question because Judge Furman seemed

Gck2oli5

Neville - Cross

1 interested.

2 Under what circumstances would you allow a client to
3 purchase an item entirely on credit with no payment schedule
4 whatsoever?

5 A. I would be prepared to do that so long as I understood the
6 client had the wherewithal to pay at some time in the future.

7 MS. GRISWOLD: No further questions, your Honor.

8 THE COURT: All right. Cross-examination.

9 MR. DeVITA: It may take a moment, your Honor.

10 (Pause)

11 CROSS EXAMINATION

12 BY MR. DeVITA:

13 Q. Good afternoon, Mr. Neville. My name is James DeVita, and
14 I represent Mr. Olins.

15 A. Good afternoon.

16 Q. Other than passing in the hallway, we have never met, have
17 we?

18 A. No.

19 Q. You were discussing just a moment ago a transaction
20 involving wall lights that you sold from Mr. Olins' collection.
21 Do you recall that?

22 A. Yes.

23 Q. Those are the -- let me show you Exhibit A. This is the
24 copy, it is somewhat redacted, but a copy of the agreement
25 that -- consignment agreement under which you originally

Gck2oli5

Neville - Cross

1 received these, is that correct?

2 A. Yes.

3 Q. And I think you testified that -- what did you testify the
4 cash component of the sale was?

5 A. I don't think I remember -- this was only a cash sale.

6 Q. This was only a cash sale?

7 A. Yes, it was only the boule chandelier that had --

8 Q. Okay. Do you know what Mr. Neville -- I'm sorry, what
9 Mr. Rusco was told and what Mr. Olins were told regarding how
10 much they were selling for?

11 A. I don't know.

12 Q. Is this one where you said you didn't have any
13 conversations with Mr. Rusco?

14 A. I don't remember having conversations directly on these. I
15 believe I was speaking with Mr. Randall at this time.

16 Q. Did you have a conversation with Mr. Randall about whether
17 you could be -- you could provide details regarding the sales
18 price and the purchaser of these? Were you asked about that by
19 Mr. Randall?

20 A. I don't remember precisely. However, it is our normal
21 practice, if requested, to send an invoice, but usually we
22 redact the name of the client.

23 Q. Let me show you what is marked as Defendant's Exhibit Q and
24 ask you to take a look at that and see if that is another copy
25 of the consignment agreement that we saw earlier, but with some

Gck2oli5

Neville - Cross

1 additional handwriting on it. Do you see that?

2 A. I do.

3 Q. I draw your attention, Mr. Neville, to the handwriting that
4 appears in the -- to the right of the two items. One is the
5 Marchault D'Arnuville Segoura.

6 What does that refer to?

7 A. That refers to the three aubergine glazed porcelain vases
8 that were made for -- given by the French king to Marchault
9 D'Arnuville, and Mr. Olins I believe purchased them from a
10 dealer in Paris called Segoura.

11 Q. So those are referring to the glaze, the vases that we saw
12 earlier, is that right?

13 A. Yes.

14 Q. Do you recognize the handwriting, the numbers and letters
15 that appear to the right of that?

16 A. No, I do not.

17 Q. But the number that's written there is 1.4 million?

18 A. Yes.

19 Q. And is that approximately what those actually sold for?

20 A. They sold for 1.3 million, yes.

21 Q. Depending on the conversion rate, it could be a little bit
22 more, right?

23 A. Depending on the conversion rate.

24 Q. Okay.

25 Now, do you notice that the wall lights that we have

Gck2oli5

Neville - Cross

1 just been talking about are listed as the second item on this?

2 Do you see that?

3 A. Yes.

4 Q. Do you understand the significance of the figure "2.6
5 million" written next to that item?

6 A. I do not know exactly what that refers to. I would only be
7 supposing if I did.

8 Q. There is no need for you to suppose.

9 But the fact of the matter is, as we have seen with
10 Exhibit C, the wall lights sold for \$1,750,000 is that right?

11 A. The wall lights sold for \$1,750,000.

12 Q. And if there was any misrepresentation to Mr. Rusco about
13 what they were selling for or to Mr. Olins, you didn't make it?

14 A. I do not remember having a discussion directly with them,
15 no.

16 Q. Well, those are two different questions. You don't
17 remember or you did not?

18 A. I do not remember having any discussions at that time with
19 them over this sale. I don't think I did. I believe at that
20 time I was discussing with Mr. Randall.

21 Q. Let me turn to the question of the vases.

22 A. Yes.

23 Q. And let me ask you to look at, if you have in front of
24 you -- if not, I can hand it to you -- Exhibit 201. Do you
25 have a copy? I will hand you a defense copy.

Gck2oli5

Neville - Cross

1 THE COURT: This is Government Exhibit 201?

2 MR. DeVITA: It is Government Exhibit 201. It's a
3 long exhibit, so he may need to have -- I may ask for
4 enlargement of some of those.

5 (Counsel confer)

6 MR. DeVITA: I will hand him this notebook.

7 A. Thank you. Thank you.

8 Q. On page 1, see this is a log of conversations and it refers
9 to a conversation that you had on May 18, 2012, with Mr. Rusco.
10 This is a log that is in evidence of Mr. Rusco's phone calls
11 with you.

12 A. Right.

13 Q. And it indicates that, in the box in the middle, where it
14 says "summary of activity details" --

15 A. Yes, I see that.

16 Q. -- it says, "We discussed garniture set. He has potential
17 buyer he thinks would sell the item for 600,000 with a net of
18 540,000."

19 Do you remember telling that to Mr. Rusco at that
20 time?

21 A. I do not remember this call, but I did mislead Mr. Rusco by
22 suggesting that we could sell the vases for between a 10 and 20
23 percent commission.

24 Q. You misled him, meaning you lied to him.

25 A. Yes.

Gck2oli5

Neville - Cross

1 Q. Okay.

2 And then, again, there is another call on May 18, and
3 there is another discussion about the sale price of 600,000
4 with a commission of 10 percent, the net proceeds of 540,000,
5 and you lied to him again on May 18, right?

6 A. Yes.

7 Q. And then if you turn the next page, you see a reference on
8 May 24, 2012. The conversation described there it says, "We
9 also discussed the garniture set. Mallett London is trying to
10 contact the potential buyer. He explained that the potential
11 transaction may involve the exchange of pieces from the
12 potential buyer (common practice). Still waiting to provide a
13 letter regarding the garniture set, but wanted to clarify the
14 transaction."

15 Do you remember telling Mr. Rusco that London was
16 trying to contact the potential buyer?

17 A. I do not remember that precise wording, no, but I did make
18 clear to Mr. Rusco that the buyer would be coming in to London
19 at that time, yes.

20 Q. Which was not true.

21 A. No, it was not true.

22 Q. You were making that up out of whole cloth.

23 A. I was making that up.

24 Q. Whether it's whole cloth or half cloth, you were making it
25 up.

Gck2oli5

Neville - Cross

1 A. Yes.

2 Q. Okay.

3 And then if you turn to page 4, June 6 -- June 7,
4 2012, reflects another conversation between you and Mr. Rusco;
5 and, according to this, you told Mr. Rusco that there was a
6 degree of urgency as the client is planning to come to London.
7 No dates at this point, but Henry will advise as soon as he
8 can."

9 Do you remember making that representation that there
10 was a degree of urgency because the client was coming to
11 London?

12 A. Yes, I do.

13 Q. And you made that up.

14 A. Yes, I did.

15 Q. Let me go back earlier in time to when you, Mallett, had
16 the vases in your custody. You mentioned earlier that at some
17 point they came to be sent to Sotheby's?

18 A. Yes.

19 Q. Who was it that directed that they be sent to Sotheby's?

20 A. I was informed that they would be sent to Sotheby's for
21 sale I believe by Mr. Randall, but I will not guarantee that.
22 I believe it was Mr. Randall.

23 Q. But it is you that put that in motion, that delivery to
24 Sotheby's, correct?

25 A. I asked for the London office to consign them to Sotheby's,

Gck2oli5

Neville - Cross

1 yes.

2 Q. I will show you what's been marked as Defendant's Exhibit

3 R.

4 A. Thank you.

5 Q. Take a moment to look at that, if you would, Mr. Neville.

6 A. Yes.

7 Q. It says -- it is addressed to someone named Giles?

8 A. Yes.

9 Q. And who is Giles? Giles Hutchison Smith.

10 A. He is the CEO in London.

11 Q. CEO in London of Mallett?

12 A. The CEO of Mallett.

13 Q. So he is the CEO overall?

14 A. Correct.

15 Q. It says, "Sotheby's London may contact you to collect and
16 photograph the Sevres garniture on behalf of party two." I
17 take it "party two" is Mr. -- is Glenn Randall?

18 A. I don't know, but that was my memory.

19 Q. "As I discussed the other day." It says, "I made party two
20 sweat a little bit and said we could not possibly released them
21 before December 10, and he has confirmed to me, although I am
22 sure it is not the whole truth, that the estimate in the
23 catalog will be 600,000 to 900,000, with a reserve of 600,000."

24 Do you recall that conversation?

25 A. I don't in detail, but I do, from reading here, recognize

Gck2oli5

Neville - Cross

1 the letter -- the e-mail.

2 Q. And that's a conversation you had with Mr. Randall.

3 A. I believe it would have been, yes.

4 Q. And it says, "They are trying to sell them privately for
5 \$750,000 return to" and then it says "party two" "which,
6 although less than us, I do not think is such an embarrassment.
7 Anyway, be assured I have vented a considerable amount of
8 irritation to party two before agreeing to anything."

9 Can you explain what that was about?

10 A. We had had interest from our client, the Sheikh of Qatar,
11 for many months prior to this e-mail, on the possibility of
12 purchasing the Sevres garniture. It was a disappointing
13 formality to allow Sotheby's to take the garniture and present
14 the vases to the same client for their successful sale.

15 Q. You say "many months." This e-mail is dated November 29,
16 2011.

17 A. Yes.

18 Q. When did you first become aware of the interest of the
19 sheikh?

20 A. I believe it was in January or February of that year, 2011.

21 Q. Of 2011.

22 A. Yes, indeed.

23 Q. Had you communicated that interest to Mr. Rusco?

24 A. Yes, I had.

25 Q. You had told him?

Gck2oli5

Neville - Cross

1 A. I had told him that we had a client who was interested, and
2 he was an Arab potentate.

3 Q. You told that to Mr. Rusco?

4 A. Yes, I had.

5 Q. Did you also tell that to Mr. Olins?

6 A. Yes, I did.

7 Q. And --

8 A. But nothing had come of his interest and we were unable to
9 push the sale through.

10 Q. I'm sorry. I didn't hear what you said.

11 A. Nothing had, until that time, come of this interest, and we
12 had been unable to push the sale through.

13 Q. So the items were delivered to Sotheby's, is that correct,
14 the three vases?

15 A. Correct.

16 Q. And what occurred after that, after they got to Sotheby's?

17 A. Sotheby's photographed them, cataloged them, and published
18 them in their sale catalog.

19 Q. And they were withdrawn from the sale.

20 A. They were.

21 Q. Is that because Mr. Olins objected to the sale?

22 A. I do not know the reason.

23 Q. I think you testified earlier that you had been given legal
24 advice that the items in London were not subject to the SEC
25 restraining order?

Gck2oli5

Neville - Cross

1 A. Correct.

2 Q. Restraining notice?

3 A. Correct.

4 Q. Was that in writing?

5 A. I don't remember that being in writing.

6 Q. You received the restraining notice in August of 2011,
7 right?

8 A. Correct.

9 Q. When was it that you got this legal advice?

10 A. Early 2012.

11 Q. Early in 2012.

12 A. Correct.

13 Q. How early? Do you remember?

14 A. I don't exactly.

15 Q. Let me show you what has been marked as -- we will mark as
16 Defendant's Exhibit S. This is an e-mail from you to
17 Mr. Olins, isn't it?

18 A. Yes.

19 Q. And in the second sentence, it says, "The first document
20 was sent to the SEC as a legal requirement describing the goods
21 on which they placed a lean." I am assuming that should be
22 L-I-E-N, right?

23 A. Correct, I believe it should.

24 Q. "Where the prices are your consignment prices to us as
25 recorded in our books." Correct?

Gck2oli5

Neville - Cross

1 A. Yes.

2 Q. So at least in January of 2012, you understood that
3 whatever is consigned to you, Mallett, is subject to the SEC
4 lien, right?

5 A. Yes.

6 Q. Let me show you what I am marking as Defendant's Exhibit T
7 as in "Thomas." Who is Justin Evershed-Martin?

8 A. He is a colleague in London.

9 Q. Can you take a look at that e-mail chain?

10 A. Yes, indeed.

11 Q. Do you recognize it?

12 A. It is an -- yes, I do.

13 Q. And this is after you have learned that Sotheby's -- the
14 vases will be coming back from Sotheby's, right?

15 A. Correct.

16 Q. And this is less than a week or a little more than a week
17 actually after the January 23 e-mail where you talk about the
18 SEC lien?

19 A. Yes.

20 Q. And in the e-mail -- the first e-mail, which is from
21 Mr. Evershed-Martin to you, Evershed-Martin to you, it says,
22 Mr. Evershed-Martin says, "Will party two," which I think we
23 have established is Glenn Randall, right?

24 A. Yes.

25 Q. "still let us sell them on his behalf? I have had an

Gck2oli5

Neville - Cross

1 inquiry about them, and Sotheby's are being deliberately vague,
2 so they came to us again."

3 Do you know who he is referring to?

4 A. No, I do not.

5 Q. Is that the sheikh or someone else?

6 A. Mr. Evershed-Martin was not responsible for the sheikh, but
7 I don't know the answer.

8 Q. But this does refer to the Sevres vases, correct?

9 A. Correct.

10 Q. And then you say, "Yes, we may sell them."

11 A. Yes.

12 Q. "And I believe that they may be being delivered back to us
13 soon."

14 A. Correct.

15 Q. So that less -- about a week after you said that the vases,
16 among other things, are subject to the SEC lien, you are now
17 telling Mr. Evershed-Martin that, Now we can sell them.

18 A. Yes.

19 MR. DeVITA: Let me mark as Defendant's Exhibit U --
20 I'm sorry, it is V as in "Victor"?

21 THE COURT: Do we have a U?

22 MR. DeVITA: I didn't think we did, but Mr. Cecutti --
23 we do not. The last exhibit I have is T.

24 THE COURT: T is the last one I have written down.

25 MR. CECUTTI: My mistake.

Gck2oli5

Neville - Cross

1 MR. DeVITA: U, right?

2 (Pause)

3 BY MR. DeVITA:

4 Q. And this is an e-mail from you to the top -- the top of the
5 page, the top item is an e-mail to you from Greg Rusco,
6 correct?

7 A. Correct.

8 Q. And the initial e-mail which is on the page with the Bates
9 number 2723 is from Mr. Olins to Mr. Rusco, isn't that right?

10 A. Correct.

11 Q. And Mr. Olins says in his e-mail, "I fully understand that
12 the Sevres garnitures are supposed to be under the control of
13 Mallett per the court's order. I believe that both Sotheby's
14 and Mallett know that no sale can be completed without the
15 written permission of both the court and the American Bank &
16 Trust Company. You certainly have authority on my behalf to
17 demand the garniture be returned to Mallett."

18 That was attached to the e-mail that was sent to you
19 by Mr. Rusco, wasn't it?

20 A. I believe so, yes.

21 Q. So it is Mr. Olins specifying that the sale cannot take
22 place without the permission of both the court and American
23 Bank & Trust, and it's being forwarded to you by Mr. Rusco,
24 right?

25 A. Yes.

Gck2oli5

Neville - Cross

1 Q. Did you contradict Mr. Rusco?

2 A. I don't believe I did, no.

3 Q. Did you correct -- at this time had you gotten this advice
4 from the lawyer that the Sevres garnitures weren't affected by
5 the SEC restraining notice?

6 A. As I said earlier, I don't know exactly when we received
7 that advice, but I did not correct Mr. Rusco, no.

8 Q. And you certainly didn't correct Mr. Olins, right?

9 A. No, I did not.

10 MR. DeVITA: Now we are up to V, right?

11 MR. CECUTTI: Yes.

12 BY MR. DeVITA:

13 Q. Let me show you what's been marked as Defendant's Exhibit V
14 as in "Victor."

15 This is now February 15, at least the top e-mail is --

16 A. Yes.

17 Q. -- and it says -- let's start with the first e-mail is a
18 reference to the efforts to get the physical custody changed
19 from Sotheby's back to Mallett, correct?

20 A. Yes.

21 Q. And then the -- on the first page, the first e-mail at the
22 bottom is from Richard Cave to you. "We have the garniture in
23 Bond Street."

24 Now, Richard Cave is the one who was negotiating the
25 sale of the Sevres garniture.

Gck2oli5

Neville - Cross

1 A. Yes.

2 Q. And then you say to him, "Well done. I am glad. Thanks
3 for the news."

4 A. Correct.

5 Q. Then he sends to you an e-mail on February 15 "Robert Olins
6 states in his e-mail of 13/2" -- which is the European way,
7 reversing the date and the month, correct?

8 A. Correct.

9 Q. Different than us Yanks.

10 So that's in February. He is referring to the
11 February 13 e-mail to Greg Rusco, "I believe that both
12 Sotheby's and Mallett know that no sale can be completed
13 without the written permission of both the court and American
14 Bank & Trust Company."

15 You see that?

16 A. Yes, I do.

17 Q. And it continues, "Would you be able to see when the
18 American Bank & Trust Company are likely to have this written
19 permission for us to sell the vases? I think I could say to
20 our client that we have secured the vases, that we have them,
21 and that we are working on the paperwork.

22 Do you see that?

23 A. Yes, I do.

24 THE COURT: Counsel, I really apologize. I have to
25 deal with a personal matter. Can you just wait 30 seconds and

Gck2oli5

Neville - Cross

1 I will be back on the bench?

2 MR. DeVITA: Yes.

3 THE COURT: Thank you.

4 (Recess)

5 THE COURT: Apologies, you may continue.

6 MR. DeVITA: Thank you, your Honor.

7 BY MR. DeVITA:

8 Q. Mr. Neville, drawing your attention to that e-mail to you
9 from Richard Cave, did you take any action at this time to
10 determine whether in fact Mallett was precluded from selling
11 those Sevres vases?

12 A. I do not remember doing so at this precise time.

13 Q. But you now have received both the e-mail from -- that
14 Mr. Rusco forwarded to you from Mr. Olins saying you have to
15 have court and bank permission, you have Mr. Cave emphasizing
16 that to you and essentially asking you for direction.

17 What did you do?

18 A. I don't remember exactly what we did. I understood that we
19 waited and that is what we did.

20 Q. Waited for what?

21 A. For clarification.

22 (Counsel confer)

23 Q. I am going to ask that you take a look, the government is
24 going to pull up Government Exhibit 103. It actually may be in
25 the book that you have in front of you. Exhibit 103.

Gck2oli5

Neville - Cross

1 A. Thank you.

2 (Pause)

3 Q. This is now February 21, is that right?

4 A. Yes.

5 Q. The last of the e-mails?

6 A. Yes.

7 Q. And this is a continuation of some of the -- because it,
8 again, refers to you have the copy of Richard Cave's e-mail to
9 you. "We have the garniture in Bond Street;" you responding,
10 "Well done, I'm glad, thanks for the news;" and then Richard,
11 Mr. cave saying to you, "So far I have told the client that
12 Mallett have them secured and that there will be some paperwork
13 to do, etc. I don't know how long this will suffice as a
14 delaying tactic. Simon Jones, who are moving items into Dudley
15 House, including the pair of chairs, say they will be doing so
16 in about a month."

17 A. Yes.

18 Q. And then you respond, "Very clever avoidance tactic. There
19 is progress, but I will know more on Thursday morning. All the
20 best, H."

21 That's from you, right?

22 A. Yes.

23 Q. Let's start with the client being referred to is the
24 sheikh?

25 A. Yes.

Gck2oli5

Neville - Cross

1 Q. And Richard Cave is telling you that he has been able to
2 stall the sheikh?

3 A. Yes.

4 Q. And you complimented him on his very clever avoidance
5 tactic?

6 A. Correct.

7 Q. What is Dudley House?

8 A. That is the sheikh's London home.

9 Q. And that's where the Sevres garnitures, where they were
10 intended to go?

11 A. I believe so.

12 Q. So this is Mr. Cave trying to light a fire under you to get
13 the approvals, right?

14 A. Yes.

15 Q. Now, let me ask you to take a look at Government Exhibit
16 115. I think you saw this earlier. This is a note of your
17 conversation on March 2 with Mr. Rusco and possibly Mr. Olins?

18 A. Yes.

19 Q. So this is roughly a week after the e-mail, maybe even a
20 little less, because there are -- yeah, it's a week after the
21 e-mail we just saw with Mr. cave, and you are saying to -- this
22 quotes you as saying -- and you prepared this note yourself?

23 A. I dictated this to administrator.

24 Q. Your words? Those are your words?

25 A. Yes, yes.

Gck2oli5

Neville - Cross

1 Q. And it says, "HN tells GR that his hands are tied. He had
2 clients interested, asking about the pieces, but is unable to
3 trade because of the SEC restrictions."

4 A. Yes.

5 Q. So clearly you understood at this time that the SEC
6 restraining notice precluded you from selling the Sevres
7 garnitures?

8 A. Yes.

9 Q. Then you told him that "the publication of the vases at
10 Sotheby's and the price that they consigned it made them
11 unsaleable at the consignment price."

12 A. Yes.

13 Q. That was a lie.

14 A. Yes.

15 Q. But the part about the pieces being subject to the SEC
16 restrictions was true.

17 A. I believed so.

18 MR. DeVITA: I am going to mark as Exhibit X -- a
19 little confusing because I am using the abbreviation X for
20 "exhibit," so it is going to be Defendant's XX?

21 MS. MAGDO: Was there a W?

22 MR. DeVITA: Oh, we are alphabetically challenged.

23 THE COURT: I don't know, Mr. DeVita. Your math
24 skills earlier weren't great either.

25 MR. DeVITA: It's a sign of age, your Honor. That's

Gck2oli5

Neville - Cross

1 all I can say.

2 BY MR. DeVITA:

3 Q. This is an e-mail from Michael Smyth Osbourne is it Smyth
4 or Smith? How is it pronounced?

5 A. Smith.

6 Q. Smyth Osbourne to Ian Hutchinson. Who are those folks?

7 A. Michael Smyth Osbourne is the CFO of Mallett PLC. Ian
8 Hutchinson is the senior accountant.

9 Q. And this is referring to a recommendation that Mr. Smyth
10 Osbourne is making, if you look at the last sentence, it says,
11 "It seems sensible at this stage, however, for us to provide
12 against his death," "his" being Mr. Olins'?

13 A. Correct.

14 Q. "As recovery looks complicated, at least in the near term.
15 Attached is the restraining order that Mallett, Inc., received
16 from the SEC."

17 Do you see that?

18 A. Yes.

19 Q. And you sent it to Mr. Smyth Osbourne, right?

20 A. I would have done, yes.

21 Q. He was your superior. You reported to him?

22 A. He was my superior.

23 Q. Just above it, it says, Mallett, Inc., who holds most of
24 his pieces, has now been served with a restraining notice by
25 the SEC forbidding Mallett, Inc., from selling any of his

Gck2oli5

Neville - Cross

1 pieces, which removes the security we had on his death."

2 A. Yes.

3 Q. So that, clearly, Mallett, Inc., is the entity that had the
4 consignment, right?

5 A. Yes.

6 Q. So that Mallett, Inc., is restrained from selling the
7 asset, wherever it is located, isn't that right?

8 A. I don't know.

9 Q. Well, that's certainly what Mr. Smyth Osbourne is saying,
10 isn't he?

11 A. I don't know.

12 Q. Well, read it again.

13 A. I am reading it. Sorry, sir, I am reading it.

14 Q. Okay. Read it again.

15 A. "Mallett, Inc., who holds most of these pieces, has now
16 been served with a restraining order by the SEC forbidding
17 Mallett, Inc., from selling any of his pieces."

18 Q. "From selling any of his pieces," correct?

19 A. That is what is written.

20 Q. Okay. And that's what you understood at the time, isn't
21 it?

22 A. I have never seen this e-mail before.

23 Q. I'm sorry?

24 A. I have not seen this e-mail before.

25 Q. But you knew that the consignment agreement was with

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Neville - Cross

1 Mallett, Inc.?

2 A. The consignment agreement was with Mallett, Inc.

3 Q. In fact, you sought very shortly after this e-mail to try
4 and get an updated, signed consignment agreement, didn't you?

5 A. I don't remember.

6 MR. DeVITA: Now we are --

7 A. I may have, but I don't remember the exact date.

8 MR. DeVITA: Now we are at X.

9 BY MR. DeVITA:

10 Q. Did you tell the government at some point that you had a
11 conversation on March 28, 2012, with Mr. Rusco in which he
12 authorized you to sell the vases for a return of \$540,000 to
13 the bank?

14 A. I believe I had a conversation late in March 2012, in which
15 I was informed that Mallett -- all parties had agreed that
16 Mallett could acquire the vases for \$540,000. However, we
17 would have to wait for supporting paperwork. I cannot remember
18 if that call was with Greg Rusco or with Mr. Olins.

19 Q. Drawing your attention to Defendant's Exhibit X?

20 A. Yes.

21 Q. Who is Sarah Sperling?

22 A. She is was the -- an administrator at Mallett, Inc.

23 Q. And the signature at the bottom of the e-mail is -- well,
24 not signature, but the name attached to it is Henry.

25 A. Yes.

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Neville - Cross

1 Q. Did you instruct her to send this e-mail?

2 A. I would have done, yes.

3 Q. And this is March 27, 2012, correct?

4 A. Correct.

5 Q. And you are asking Mr. Rusco to sign a -- to sign the
6 consignment agreement from October 2010?

7 A. Correct.

8 Q. And in that -- you signed it.

9 A. I did.

10 Q. And in that consignment agreement, it says that the vases
11 are consigned for \$725,000 return. That means 725,000 to the
12 bank?

13 A. Correct.

14 Q. And it says, "Net proceeds to cosigner \$3,373,000 unless
15 otherwise agreed by cosigner."

16 A. Consignor.

17 Q. Consignor. I'm sorry.

18 A. Yes, indeed, yes.

19 Q. If you had an agreement in late March to buy them for
20 \$540,000, why are you sending Greg Rusco a consignment
21 agreement that says they are going to have a return to the bank
22 of \$725,000?

23 A. Because our auditors needed to have paperwork to prove that
24 we had these pieces for the previous year, calendar year, for
25 2011, because the consignment ended the 30th of September,

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Neville - Cross

1 2011, and this consignment agreement itself had never been
2 signed.

3 Q. But wouldn't you update to reflect -- if you are asking for
4 written permission to sell or to purchase for \$540,000,
5 wouldn't you update the amount of the consignment to reflect
6 the new agreement?

7 A. I don't believe I would have done. I may have done, but I
8 don't believe I would have done, because this was an historic
9 document that was being asked for by the London Finance
10 Department in order to clarify the paperwork.

11 Q. So you would submit to the accounting department for the
12 auditors a misleading document, is that what you are saying?

13 A. No. This document refers to the previous year. It does
14 not refer to the present time. It refers to the time from
15 2000 -- October 2010 through 30 September 2011.

16 THE COURT: Mr. DeVita, let's stop there for the day.

17 MR. DeVITA: That's fine.

18 THE COURT: Any estimate on how much longer you have
19 on cross?

20 MR. DeVITA: Well, your Honor, since I will have
21 overnight, it is the old story about I didn't have enough time
22 to write a short letter. I might have time to, unlike the
23 usual practice of lengthening because of additional time, I may
24 be able to shorten it, and I would predict within half an hour
25 to an hour.

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Neville - Cross

1 THE COURT: All right. And do you anticipate having
2 defense witnesses.

3 MR. DeVITA: The only remaining decision, your Honor,
4 is whether Mr. Olins is going to testify. There will not be
5 any other defense witnesses.

6 THE COURT: Can we resume at 9:30 tomorrow?

7 MR. DeVITA: That's fine with me.

8 MS. GRISWOLD: Good for the government.

9 THE COURT: Okay.

10 So, Mr. Neville, you are excused. Because you are on
11 cross-examination, you are not permitted to communicate with
12 the representatives of the government overnight, so you should
13 be back here a few minutes before 9:30, ready to go. We will
14 resume your testimony at that time.

15 THE WITNESS: Yes. Thank you, your Honor.

16 THE COURT: Have had a good evening. You may step
17 down.

18 MR. DeVITA: Thank you, your Honor.

19 THE COURT: Counsel, do we need to discuss anything?
20 I was excusing the witness so we could talk, but if there is
21 nothing to talk about.

22 MR. DeVITA: Well, unless you wanted to talk about
23 scheduling.

24 THE COURT: I think we have just discussed that.

25 MR. DeVITA: I meant what happens next.

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Neville - Cross

1 THE COURT: I think we are resuming at 9:30.

2 MR. DeVITA: Yes. I meant after the completion of the
3 testimony, does your Honor still intend to proceed with the
4 sentencing?

5 THE COURT: I think you should be prepared for that
6 possibility and I would certainly hope that I would, because it
7 will be fresh in my mind and I will have the opportunity now to
8 reflect on what I have heard, while keeping an open mind,
9 because I haven't heard everything. I may change my mind
10 tomorrow.

11 MR. DeVITA: I just want to be prepared, your Honor.

12 THE COURT: You should certainly be prepared for the
13 likelihood, certainly the possibility, if not the likelihood,
14 that we will proceed directly to sentencing. But some of it
15 will also depend on timing. I do have other matters scheduled
16 later in the day tomorrow. So depending how long things go, I
17 may or may not have time to do it. So we will play it by ear,
18 take it one step at a time.

19 I will tell you that I will not be here from Thursday
20 through January 4. So if it doesn't happen tomorrow, we will
21 have to talk about when it will happen.

22 MR. DeVITA: All right.

23 THE COURT: All right?

24 MR. DeVITA: Thank you, your Honor.

25 THE COURT: Have a good evening. I will see you

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Neville - Cross

1 tomorrow.

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